

43 Phil. 529

[ G. R. No. 17150. June 20, 1922 ]

**ANDRES SOLER, PLAINTIFF AND APPELLEE, VS. EDWARD CHESLEY, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**ROMUALDEZ, J.:**

The plaintiff had agreed with Wm. H. Anderson & Co., for the purchase of certain machinery, as evidenced by the document Exhibit A, of which the following is an exact copy:

“This agreement made and entered into by and between Wm. H. Anderson & Co., party of the first part, and Andres Soler, party of the second part, Witnesseth:

“The party of the first part hereby agrees to deliver to the party of the second part the herein described cocoanut oil machinery which was ordered by cable by the party of the first part on March 4, 1918, and the party of the second part agrees to purchase the said machinery from the party of the first part on the terms and conditions given below;

“1. 4 Anderson oil expellers No. 1, side drive complete with stationary strainer, and fitted with a 15-h. p. motor, the same mounted on a special base on the expeller and connected to the expeller by a suitable silent chain drive.

“2. 4 Rotary pumps (oil) attached to and driven from expeller.

“3. Sufficient 6” and 9” metal conveyor, etc., for the 4 expellers to make complete conveyor line with supports for securing to expeller.

“4. 1 Vertical triplex pump, 2 ½ ” X 4”, 1 ½ ” suction and discharge, capacity 12 gallons per minute, belt drive.

"5. 1 Bauer ball-bearing motor-driven attrition mill, 22", fitted with 2 15-h. p. electric motors, 220 volt, 2 phase, 60 cycle, direct-connected and complete with automatic starter.

"6. 1 Shriver filter press, 30", 36 plates, complete with one extra set of filter cloths.

"7. 1 Buckeys cooker, 62", 3 high, direct-connected by silent chain drive to a 15-h. p., 220 volt, 2 phase, 60 cycle, alternating current motor.

"8. Sufficient meters of standard chain elevator, etc.

*"Terms and conditions:* The foregoing machinery is to be invoiced at manufacturers' price, plus all charges such as freight, insurance, interest and exchange, arrastre, landing charges, delivery, internal revenue, etc.; plus a buying commission of 5 per cent. "The terms of payment are fifty per cent (50%) deposit to be made upon arrival of the machinery, and the balance ninety (90) days after delivery of the machinery.

"In the event that the party of the second part shall fail to live up to the terms of this agreement, such failure by the party of the second part will be sufficient cause to terminate this contract, and any payments made by the party of the second part under and by virtue of this contract shall be and remain the exclusive property of the party of the first part. The title of the machinery in question is to remain in the name of the party of the first part until payment in full has been made, at which time transfer of all right and title to the above mentioned machinery will be made to the party of the second part.

"This agreement is contingent upon strikes, fire, accidents, extraordinary shipping and other conditions imposed on account of war and other causes unavoidable or beyond the control of the party of the first part.

"It is strictly understood that the quotations made to, Mr. Andres Soler under date of February 27, 1919, were approximated and were subject to change without notice. We can therefore make no guarantee as to prices and delivery, it being understood that prices charged will be those shown on the invoices of the manufacturers, and shipment will be made by first possible opportunity. "Dated Manila, P. I., March—, 1918.

(Sgd.) "WM. H. ANDERSON &  
CO.,

"By P. A. THOMPSON,  
"Party of the first part.

(Sgd.) "ANDRES SOLER,  
"Party of the second part.

"Witness:

Sgd.) "W. JENUDE,  
"FERNANDO COUTME."

On November 16, 1918, the plaintiff sold the defendant all his rights and interest in; "he aforesaid contract of sale, the document executed to that end, Exhibit B, being as follows:

"This agreement made in Manila, Philippine Islands, by and between Mr. Andres Soler, of age, and resident of the municipality of Naga, Province of Ambos Camarines, party of the first part; and Mr. Edward Chesley, of age, and resident of this city of Manila, party of the second part, \* \* \*

"WITNESSETH

"First. That Mr. Andres Soler has an agreement in due form with Messrs. Wm. H. Anderson & Co. for the purchase of a cocoanut oil machinery, more particularly described in the said agreement as follows:

"1. 4 Anderson oil expellers No. 1, side drive complete with stationary strainer, and lifted with a 15-h. p. motor, the same mounted on a special base on the expeller and connected to the expeller by a suitable silent chain drive,\* \* \*.

"2. 4 Rotary pumps (oil) attached to and driven from expeller.

"3. Sufficient 6" and 9" metal conveyor, etc., for the 4 expellers to make complete conveyor line with supports for securing to expeller.

"4. 1 Vertical triplex pump, 2 1/2" X 4", 1/2" suction and discharge, capacity 12 gallons per minute, belt drive.

"5. 1 Bauer ball-bearing motor-driven attrition mill, 22", fitted with 2 15-h. p. electric motors, 220 volt, 2 phase, 60 cycle, direct-connected and complete with

automatic starter.

"6. 1 Shriver filter press, 30", 36 plates, complete with one extra set of filter cloths.

"7. 1 Buckeys cooker, 62", 3 high, direct-connected by silent chain drive to a 15hp. p., 220 volt, 2 phase, 60 cycle, alternating current motor.

"8. Sufficient meters of standard chain elevator, etc.

"Second. That a part of the aforesaid machinery is at this time on the way, the other part being already in this city of Manila, the price of which has not as yet been paid by Mr. Soler to Messrs. Wm. H. Anderson & Co. \* \* \*.

"Third. That being interested in acquiring the aforesaid machinery, Mr. Edward Chesley has made Mr. Soler a proposition whereby the latter should transfer it to him, and he should assume the obligation to pay Messrs. Wm. H. Anderson & Co. the amount of the invoices thereof, Mr. Soler to be relieved from his contract with Messrs. Wm. H. Anderson & Co., which proposition has been agreed to as hereinbelow set forth, and to have an evidence of the agreement this contract is made and entered into by them in the following terms and conditions:

"(a) Mr. Andres Soler conveys and transfers to Mr. Edward Chesley all the rights and interest which he may have in his agreement with Messrs. Wm. H. Anderson & Co. for the purchase of the oil machinery, more particularly described in the first paragraph hereof; Mr. Chesley being subrogated, therefore, to whatever rights and obligations Mr. Soler may have acquired and contracted under the aforesaid agreement. \* \* \*

"(b) This sale of the said machinery is for the price of *one hundred thousand pesos*, Philippine currency, the same to be paid by Mr. Chesley by paying Messrs. Wm. H. Anderson & Co. the amount of the invoices of said machinery, and Mr. Andres Soler the difference which may be found to exist between the amount of said invoices and the above mentioned sum of *one hundred thousand pesos*, said payment to be secured by personal or corporation bond to the satisfaction of Mr. Soler. \* \* \*

"(c) In subrogating himself to the rights and obligations which Mr. Soler may

have under his agreement with Messrs. Wm. H. Anderson & Co. for the purchase of the aforesaid machinery, Mr. Chesley relieves Mr. Soler from whatever obligation he has, or may have, under the aforesaid agreement with Wm. H. Anderson & Co., concerning the machinery hereinbefore more particularly described. \* \* \*

“(d) Messrs. Soler and Chesley declare that Messrs. Wm. H. Anderson & Co. have actual knowledge of this sale of the machinery, as well as of Mr. Chesley being subrogated to the rights and obligations created by the agreement entered into by and between Mr. Soler and Messrs. Wm. H. Anderson & Co., the latter being in absolute conformity therewith. \* \* \*

“And (e) Mr. Chesley shall pay Mr. Soler the difference which may be found to exist between the amount of the invoices of the machinery and the sum of *one hundred thousand pesos* immediately upon the arrival of said machinery at this city of Manila; provided that if any part of the machinery not affecting the expellers is found lacking, a proportional deduction shall be made from the amount which Mr. Soler may have received from Mr. Chesley. \* \* \*

“And fourth. That Messrs. Soler and Chesley solemnly make and enter into this contract on the terms and conditions hereinbefore set forth. \* \* \*

“*In testimony whereof*, the parties have hereunto set their hands at Manila, this sixteenth day of November, nineteen hundred and eighteen.

(Sgd.) “ED CHESLEY.

(Sgd.) “ANDRES SOLER.

“Signed in the presence of:  
(Sgd.) “MANUEL SANSANO.

“P. Blanc.

“UNITED STATES OF AMERICA “CITY OF MANILA, PHILIPPINE ISLANDS

“At the city of Manila, Philippine Islands, this 16th day of November, 1918, before me, Enrique Barrera y Caldes, notary public in and for the said city, personally appeared Mr. Andres Soler and Mr. Edward Chesley known to me to

be the persons who executed the foregoing instrument, and acknowledged that the same is their free act and deed. They exhibited their cedula Nos. 220440 and 2074, issued at the municipality of Naga, Province of Ambos Camarines and at this city of Manila on the 2d and 3d of January, 1918, respectively.

“This document is No. 526 of my notarial register, and is entered on page 4 of said register.

“Before me,

“DON ENRIQUE BARRERA Y  
CALDES,  
*“Notary Public.*  
*“My Commission expires*  
*December 31, 1918.*

“Notarial seal.

“I, manager of the firm of Anderson & Co., am agreeable to the transfer of the machinery which Mr. Soler has purchased through our firm on the conditions stipulated in our contract.

“WM. H. ANDERSON & CO.,  
By.....  
*“Vice-President.”*

Of the parts of the machinery covered by these contracts, only the “filter press,” the “cooker” and the “chains” were in Manila on November 16, 1918, the date of Exhibit B, but the most important parts, such as the “oil expellers” and the “grinding mills,” were not then yet in this city.

The “oil expellers” were shipped for Manila on the 12th of December, 1918, the motors on the 8th of January, 1919, the machinery on the 16th of January, 1919, and the grinding mills on the 21st of February, 1919, all of which arrived at Manila on February 13, March 8, April 27, and August 23, 1919, respectively.

These effects were received and paid for by the defendant under protest, on account of the fact that they were not delivered within the periods stipulated in the contract.

On April 25, 1919, the defendant's attorney-in-fact, Fred A. Leas, through Attorney Francisco A. Delgado, wrote the plaintiff the letter, Exhibit 2, advising him that the contract above referred to was rescinded, it appearing that the parts of the machinery, which the plaintiff asserted in said contract were on the way, were not at the time and it was only several days later that they were shipped for Manila. In this letter the parts received were placed at the plaintiff's disposal upon the repayment of the sums advanced by the defendant to Messrs. Anderson & Co.

On the 14th of October, 1919, the plaintiff commenced this action in which, basing himself on the contract Exhibit B and on the facts set forth in his complaint, he prayed that the defendant be sentenced to pay him the sum of P30,546.03 with interest thereon, which sum was the difference between the P100,000, the consideration of the contract, Exhibit B, and the price of the aforesaid machinery which had been paid by the defendant, plus the incidental expenses, as stipulated in the said contract.

The defendant answered, denying generally and specifically the allegations of the complaint and setting up a special defense and a counterclaim. In his special defense, he alleges that he had accepted and signed the contract Exhibit B on the assertion therein contained that of the machinery, which was the subject matter of the said contract, a part was already in Manila, and the other part on the way, and also on the promises, assertions, and contemporary and previous acts of the plaintiff to the same effect, by means of which the latter succeeded in inducing the defendant to make and sign the aforesaid contract; that the parts of the machinery which, on the date of the contract, were said to be *on the way*, were not in fact in, and did not arrive at, Manila but long thereafter; that if he signed the contract, it was because he was desirous of having the machinery, and the defendant assured him that it would be delivered to him, immediately or within a short time; that otherwise he would not have signed the contract; that he prepared in a shed the necessary compartments to install the machinery on or before the 1st day of January, 1919; that on April 25, 1919, he advised the plaintiff that he regarded the contract as rescinded; that he had complied with his part of the contract, having paid Messrs. Anderson & Co. the sum of P69,453.97; that he suffered damages in the sum of P120,000.

In his counterclaim, the defendant alleges that the giving of a bond in favor of plaintiff being one of the conditions of the contract, he (the defendant) gave such bond, having paid the Philippine Guaranty Co. a premium of P400 for the quarter beginning with November 16, 1918,

The defendant prays in his answer that he be absolved from the complaint, the aforesaid contract declared rescinded, and the plaintiff compelled to receive the machinery in question, to pay the defendant P69,453.97, and be sentenced to pay P120,000 as damages.

Trial having been held, the lower court sentenced the defendant to pay the plaintiff P30,546.03, with legal interest thereon from October 16, 1919, and the costs, and absolved the plaintiff from the set-off and the counterclaim.

From this judgment the defendant has appealed to this court, making the following assignments of error:

1. The trial court erred in not holding that time was an essential element of the contract Exhibit B.
2. The trial court erred in giving judgment in favor of the plaintiff, and
3. The trial court erred in dismissing the counterclaim of the defendant.

The defendant, testifying as witness, said that he had asked the plaintiff and his broker, Mr. Blanc, whether at that time the machinery had already left the factory, and that they answered yes. True, the plaintiff denies in his testimony having made such a statement, but Mr. Blanc does not deny it, and it is a fact that in the contract in question was inserted the following:

“Second. That a part of the aforesaid machinery is at this time on the way, the other part being already in this city of Manila, the price of which has not as yet been paid by Mr. Soler to Messrs. Wm. H. Anderson & Co.”

It appears sufficiently established in the record that if the plaintiff gave his consent to this contract, it was because he expected that said machinery would arrive within a short time,—the time reasonably necessary for such machinery to reach Manila from America,—as the plaintiff asserted in the document itself that said machinery was then on the way. The act of the defendant in insisting that this guaranty as to the arrival of the machinery be stated in the contract, his repeated complaints and protests when he afterwards made payments as the parts arrived, and his of April 25, 1919, leave no room for doubt that the arrival of said machinery within a reasonably short time was one of the determining elements of his consent. These acts of the defendant disclose the fact that he intended the arrival of the machinery to be an essential element of the contract (art. 1282, Civil Code),

We hold that in the case at bar the arrival of the machinery within a reasonable time was an essential element of the contract, such time to be determined by taking into account the fact that it was then on the way to Manila.

The defendant had no reason to doubt the veracity of the plaintiff's assertion that said machinery was then on the way. The plaintiff himself testified that he had showed the letters, copies of which are Exhibits X, Y, and Z, in the last of which Messrs. Anderson & Co. stated that according to the information received, the expellers had already been sent out by the manufacturers.

The fact that the plaintiff had no control of the prompt transportation of the said machinery to Manila, does not relieve the plaintiff from making good the guaranty inserted in the contract that said machinery was already on the way to Manila. The plaintiff elected to bind himself in that way, although he knew, as he ought to have known that, had his rights not been transferred to the defendant, he could not have charged Messrs. Anderson & Co. so much, who in the contract Exhibit A did not guarantee the delivery nor the amount of the price. The plaintiff having bound himself in favor of the defendant for more than what Messrs. Anderson & Co. had bound themselves for in his favor, we entertain no doubt that he acted in good faith, encouraged by the information of Messrs. Anderson & Co. (although the most that the latter asserted, also upon information, was that the expellers,—only the expellers,—had been sent out by the factory), but it was he, not Messrs. Anderson & Co., who contracted the obligation, and, therefore, he is the only one to be responsible for the obligation arising from the contract. He who contracts and assumes an obligation is presumed to know the circumstances under which said obligation can be complied with (*Ferrer vs. Ignacio*, 39 Phil., 446).

It cannot be said that such a statement of the plaintiff that the machinery was on the way is not one of the conditions of the contract Exhibit B. It is true that it is only in the third paragraph of the said contract that the terms and conditions thereof are set out in detail, but such terms and conditions were stipulated upon the understanding that the machinery is that described in the first paragraph of the contract and that a part thereof was already in Manila and the other part on the way.

True, the plaintiff did not specify the date or time of the arrival of said mechanical devices; but he did assert that they were on the way on the date of the contract, that is, the 16th of November, 1918, which is tantamount to saying that they would arrive early in January, 1919, under normal conditions, taking into account that the expellers, which were shipped

on December 12, 1918, arrived at Manila on February 13, 1919. But it did not happen as asserted, the last parts of the machinery, to wit, the grinding mills not having arrived at Manila until the 23d of August, 1919, they not having been shipped until as late as the 21st of February of that year.

Clause (c) of the third paragraph of the contract Exhibit B discharged the plaintiff from all the obligations contracted by him under the agreement Exhibit A made with Messrs. Anderson & Co., relative to the payment of the price of the machinery; but he was not thereby released from the obligation assumed by him under the contract Exhibit B as to the arrival of the machinery, which obligation cannot be that referred to in clause (c) of the third paragraph of Exhibit B, for he has no such an obligation under the said contract Exhibit A, but Messrs. Anderson & Co.

We find that the plaintiff has failed to carry out his obligation incurred under the second paragraph of the contract Exhibit B, and has, therefore, no right to compel the defendant to comply with his obligation to pay the plaintiff the sum claimed in the complaint (art. 1124, Civil Code).

With regard to the counterclaim set up by the defendant, it appears from the record that he sold the aforesaid machinery to a third person, the Philippine Refining Co. In cases like this, the rescission of the contract does not lie (art. 1295, Civil Code).

As to the damages claimed by the defendant, we find that the evidence adduced on this point is insuiRcient to fix the true amount thereof.

The judgment appealed from is reversed, and the defendant absolyed from the complaint, and the plaintiff from the counterclaim and other claims of the defendant without special pronouncement as to costs. So ordered.

*Araullo, C. J., Malcolm, Villamor, Ostrand, and Johns, JJ., concur.*

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