

LOPEZ, LOCSIN, LEDESMA & CO., INC., PETITIONER, VS. HON. COURT OF APPEALS AND CMS STOCK BROKERAGE, INC., RESPONDENTS.

G.R. No. L-41291. December 08, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review of the decision of the Court of Appeals, affirming except as to the portion on damages a summary judgment for specific performance promulgated by the trial court in favor of the private respondent.

On August 14 and 26, 1969, CMS Stock Brokerage, Inc. (CMS for short) sold to Lopez, Locsin, Ledesma and Co., Inc., (LLL for short) on the floor of the Makati Stock Exchange, among others, 2,650 Benguet Consolidated shares for the total price of P297,650.00 on a ten (10) to twenty (20) days delayed delivery basis. The sale is evidenced by Exchange Contracts Nos. B-11807 and B-11814 both dated August 14, 1969 and B-13084 dated August 26, 1969. Of these 2,650 shares, 500 shares were purchased for and on orders of Jose Ma. Lopez; 1,600 shares for and on orders of Alfredo Ramos; 275 shares for and on orders of Rene Ledesma; and 275 shares for and on orders of Cesar A. Lopez, Jr.

CMS, however, failed to deliver to LLL the 2,650 Benguet Consolidated shares within the ten (10) to twenty (20) days stipulated in the exchange contracts between them alleging non-delivery as due to mere oversight owing to the huge volume of transactions.

On or about January 5, 1970 or four (4) months later, in the course of an audit of CMS's books of accounts and other records by Sycip, Gorres Velayo & Co., the auditors discovered that the 2,650 Benguet Consolidated shares which CMS sold to LLL still remained undelivered and unpaid by LLL.

So CMS made known to LLL that it would effect delivery of said shares of stocks the following day. LLL in its letter dated January 7, 1970, however, refused to accept delivery at that late time since its clients for whom the purchases were made had "elected to cancel" the orders.

On January 8, 1970, CMS replied that, pursuant to the Rules and Regulations of the Makati Stock Exchange, LLL had no right to cancel its orders, nevertheless, made a disposal in favor of LLL the next day.

On January 9, 1970, LLL refused to acknowledge receipt of and sign the covering disposal letter. What CMS did was to deposit the letter with the Office of the Stock Exchange's Executive Secretary with the notations: "Refused Acceptance pending decision of the Exchange."

The foregoing dispute was referred to the Board of Governors of the Makati Stock Exchange which rendered the following decisions:

"RESOLVED, that (1) Messrs. Lopez, Locsin, Ledesma & Co., Inc., as buyer of 2,650 Benguet shares per contracts executed August 14, 1969 to August 26, 1969 for delivery within 10 to 20 days be held to have

violated Section 1 of Article VI of the Rules and Regulations of the Makati Stock Exchange for failure to advise the selling broker in writing within a reasonable time; (2) CMS Stock Brokerage, Inc., be, as it is hereby held to have violated Section 1 (5) of Article XI of the Rules and Regulations of the Makati Stock Exchange for failure to give notice in writing on the agreed date of delivery of 2,650 Benguet shares and even within a reasonable time from said agreed date of delivery;

"RESOLVED, FURTHER, that both parties to the disputed transaction having violated the Rules and Regulations of the Makati Stock Exchange, be left to settle their dispute by any means to them by applicable laws;

"RESOLVED, FINALLY, that for having violated the aforesaid Rules and Regulations of the Exchange, Messrs. Lopez, Locsin, Ledesma & Co., Inc., and CMS Stock Brokerage, Inc., be, as they are hereby fined in the sum of P6,000.00 each to be paid within ten (10) days from the date of notice of this decision." (p. 9, Rollo)

On March 15, 1971, CMS Stock Brokerage, Inc., filed a complaint docketed as Civil Case No. 14518 in the Court of First Instance of Rizal against Lopez, Locsin, Ledesma & Co., Inc., to compel the latter to accept the shares of stocks in question.

A motion to dismiss was filed by LLL on the ground of lack of cause of action to which CMS filed an opposi-tion. In an order dated May 21, 1971, the Court denied the motion as "the ground does not appear to be indubitable."

In its answer with counterclaim, LLL, by way of affirmative defenses, alleged among others: (1) the complaint states no cause of action; (2) the Rules and Regulations of the Makati Stock Exchange do not affect the contractual relations between the parties which are solely governed by Civil Laws; (3) plaintiff is in pari delicto having likewise violated the said Rules and Regulations when it failed to comply with par. 5, Sec. 1, Art. XI providing that:

"On the agreed day of delivery, notice of writing shall be given by the selling broker, said notice to reach the buying broker not later than 4:00 p.m. x x x."

and (4) considering the speculative or fluctuating value of the mining stocks, time is of the essence of the contract; hence, the delivery made four (4) months later is not within the contemplation of the sale in question which was on a 10-to-20 day delayed delivery basis.

Upon motion of the defendant LLL, the lower court admitted its third-party complaint against Jose Maria Lopez, Cesar A. Lopez, Jr., Alfredo Ramos and Rene Ledesma. The third party complaint merely seeks reimbursement from the third-party defendants in the event LLL is held liable in the case.

Third-party defendant, Rene Ledesma did not file any answer to the third-party complaint.

The plaintiff and defendant third-party plaintiff filed their respective answers to the counterclaims of third-party defendants Jose Maria Lopez and Cesar Lopez, Jr.

Resolving the case, the trial court rendered a decision, dated August 10, 1972, the dispositive portion of which reads:

"WHEREFORE, this Court hereby renders judgment as follows:

"1. In favor of plaintiff on its complaint by --

"(a) Compelling defendant Lopez, Locsin, Ledesma & Co., Inc., to accept delivery from plaintiff of the 2,650 shares of Benguet Consolidated covered by the latter's disposal letter of January 9, 1970 and to pay plaintiff the amount of P297,650.00 representing the total price for which defendant purchased the said shares on the

trading floor of the Makati Stock Exchange on August 14 and 26, 1969, plus legal interest thereon from the date of extra-judicial demand on January 9, 1970 until the said amount shall have been fully paid, it being understood that the interest due from January 9, 1970 up to the filing of the Complaint on March 15, 1971, shall be compounded and shall earn legal interest; and

"(b) Adjudging the defendant to pay plaintiff the amount of P25,000.00 as and for attorney's fees.

"2. In favor of plaintiff on its counterclaims against the counterclaims of third-party defendants Cesar Lopez, Jr. and Jose Maria Lopez, by condemning them, jointly and severally with the defendant and third-party plaintiff, to pay plaintiff -

"(a) By way of moral damages the amount of P20,000.00;

"(b) By way of exemplary or corrective damages the amount of P50,000.00 as an example or correction for public good; and

"3. In favor of the third-party plaintiff and against the third-party defendants on the third-party complaint by-

"(a) Ordering the third-party defendants, pro rata, to reimburse the third-party plaintiff the principal amount of P297,650.00 plus legal interest thereon, referred to in the preceding paragraph 1 of the dispositive portion of this decision, which it may have paid to the plaintiff under this judgment; and

"(b) Dismissing the counterclaims of the third-party defendants against the third-party plaintiff for attorney's fees, moral and exemplary damages, and the expenses of litigation;

"4. The defendant (third-party plaintiff) and the fourth third-party defendants are jointly and severally liable to payment of attorney's fees, moral and exemplary or corrective damages awarded to plaintiff under this judgment.

"With costs of suit against the defendant. (pp. 364-367, PRA)." (PP. 67-68, Rollo).

Consequently, Lopez, Locsin, Ledesma & Co., Inc., and third-party defendants Jose Ma. Lopez and Cesar Lopez, Jr., and Alfredo Ramos appealed to the Court of Appeals.

On June 5, 1975, the Court of Appeals affirmed the decision of the trial court. The dispositive portion of the appellate decision reads:

"WHEREFORE, the appealed judgment is hereby affirmed with the exception of the award of damages and attorney's fees in favor of plaintiff-appellee which is hereby set aside. The records of this case are remanded to the trial court for the determination of the claim for damages and attorney's fees. No pronouncement as to costs." (p. 96, Rollo)

Hence, this present petition.

Herein petitioners made the following assignments of errors:

I

THE RESPONDENT COURT ERRED IN SUSTAINING THE LOWER COURT BY FINDING 'THAT PLAINTIFF (RESPONDENT CMS) HAS A CAUSE OF ACTION AGAINST DEFENDANT-APPELLANT (PETITIONER LLL)' DESPITE ITS AGREEING THAT 'IN EVERY STOCK EXCHANGE CONTRACT, TIME IS OF THE ESSENCE' AND THE ADMISSION IN THE COMPLAINT THAT RESPONDENT CMS FAILED TO DELIVER TO THE PETITIONER LLL 'THE AFOREMENTIONED SHARES WITHIN THE PERIOD OF 10-20 DAYS STIPULATED IN THE EXCHANGE OF CONTRACTS BETWEEN THEM.'

II

THE RESPONDENT COURT ERRED IN HOLDING THAT THE ALLEGED OVERSIGHT OF THE PRIVATE RESPONDENT, IN DELIVERING THE SUBJECT SHARES OF STOCK ON TIME, IS 'NOT MATERIAL' TO THE CASE AND IS 'NOT A GENUINE TRIABLE ISSUE.'

III

THE RESPONDENT COURT ERRED IN HOLDING THAT, BECAUSE PETITIONER LLL ALLEGED NO KNOWLEDGE OF THE AVERRED 'OVERSIGHT' BY RESPONDENT CMS, 'TO PROCEED TO TRIAL ABOUT THE MATTER IS A USELESS ONE.'

IV

THE RESPONDENT COURT ERRED IN FINDING 'WITHOUT MERIT' THE CONTENTION 'THAT THE EXCHANGE CONTRACTS SUBJECT MATTER OF THE PRESENT LITIGATION ARE NOT COVERED BY THE ABOVE RULES (OF THE EXCHANGE).'

V

RESPONDENT COURT ERRED WHEN IT RULED THAT THE RULES OF THE EXCHANGE SUPPLANT RATHER THAN SUPPLEMENT THE CIVIL CODE AND IN FINDING THE PETITIONER LLL TO HAVE VIOLATED SAID RULES.

VI

THE RESPONDENT COURT ERRED IN HOLDING 'THAT THERE IS NO PLACE FOR THE APPLICATION OF THE DOCTRINE OF 'IN PARI DELICTO' IN THE PRESENT CASE.

VII

THE RESPONDENT COURT ERRED IN SUSTAINING THE TRIAL COURT'S MISTAKEN APPLICATION OF JUSTICE AND EQUITY AND THE ERRONEOUS MEANING IT GAVE TO THE RULES OF THE EXCHANGE.

VIII

THE RESPONDENT COURT ERRED IN FINDING THAT THE LOWER COURT DID NOT COMMIT ANY ERROR IN GRANTING THE MOTION FOR SUMMARY JUDGMENT OF PLAINTIFF-APPELLEE (RESPONDENT CMS). (Brief for Petitioner, Rollo, p. 209)

It is the petitioner's main contention that the law on contracts is controlling in this case: hence, CMS' failure to deliver the 2,650 Benguet Consolidated shares of stocks within the stipulated time of ten (10) to twenty (20) days warrants the rescission of the exchange contracts in question. The petitioner states that it cannot, therefore, be compelled to accept the belated delivery of these shares of stocks about four (4) months after they were ordered. To resolve the issues raised by the parties, we first examine the nature and purposes of an exchange --

"An exchange is a voluntary association or corporation organized for the purpose of furnishing to its members a convenient and suitable place to transact their business of promoting uniformity in the customs and usages of merchants, of inculcating principles of justice and equity in trade, of facilitating the speedy adjustment of business disputes, of acquiring and disseminating valuable commercial and economic information and generally of securing to its members the benefits of co-operation in the furtherance of their legitimate pursuits." (See *Nicole v. Ames*, 173 US 509, 43 L Ed 786, 19 S Ct 522).

Like any other association, an exchange has the power to adopt its own constitution, by-laws, rules and regulations so far as they are not contrary to law or public policy and which will secure to the members exclusive rights and privileges which the courts have fully recognized. (*Hyde v. Woods*, 94 US 523, 24 L Ed 264; *Zell v. Baltimore Stock Exchange*, 102 Md. 489, 62 A 808). Anyone who becomes a member of the exchange voluntarily

submits himself to the operation of these rules and is expected to be bound by and to respect them. As held in the case of *Belton v. Hatch* (109 NY 593, 17 NE 225, 226):

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"x x x The interest of each member in the property of the association is equal, but it is subject to the constitution and by-laws, which are the basis on which is founded the association. They express the contract by which each member has consented to be bound, and which measures his duties, rights and privileges as such. It seems most clear to me that this constitution and the by-laws derive a binding force from the fact that they are signed by all the members, and that they are conclusive upon each of them in respect of the regulations of the mode of transaction of his business, and of his right to continue to be a member. x x x" (underlining supplied)

There is no dispute that the exchange contracts in question were drawn up on the floor of the Makati Stock Exchange between two (2) member stockbrokers, CMS as the seller and LLL, as the buyer for and on orders of the third parties. As members of the stock exchange, they are bound by the rules and by-laws of the exchange. We agree with the observation of the respondent court that:

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"x x x in every stock exchange contract, time is of the essence. We believe, however, that it is precisely for this reason why the Makati Stock Exchange, Inc., and the members thereof agreed to have a set of Rules and Regulations which shall govern the members in dealings and transactions with one another. Both plaintiff-appellee and defendant-appellant are members of the Makati Stock Exchange, Inc. As such, they are bound by the Rules and Regulations of the Exchange." (p. 79, Rollo).

The above observation is supported by the constitution of the Makati Stock Exchange, particularly Article II, Section 4 of which provides:

"The Board shall prescribe rules for dealing on the Exchange. It shall prescribe rules as to insolvency and as to Exchange Contracts the performance thereof, and default thereon, and may extend or postpone the time for the performance of exchange contracts, whenever in its opinion, such action is called for by the public interest or by just and equitable principles of trade.

"It may adopt such rules as may be deemed necessary or proper in respect to exchange contracts." (p. 82, Rollo)

The rule at issue in the instant case is Section I, Article V of the Rules and Regulations. It reads:

"In the event of a Selling Member failing to make delivery within a reasonable period of time of shares sold under delayed delivery contract, it shall be the Buying Member's duty to advise the Selling member in writing giving him 1 full business day from the time of receipt of said letter of demand to make delivery.

"The Buying Member shall obtain a written receipt from the Selling Member on the duplicate copy of the letter of demand. This receipt must state the time of delivery of the letter of demand to the Selling Member.

"Fifteen days shall be considered a reasonable period of time within which to effect delivery unless otherwise stated in the sales contract.

"In the event a Selling Member is unable to make delivery within said period, the Buying Member shall deliver a copy of his letter of demand to the Chairman of the Floor Trading & Arbitration Committee who may purchase the shares for the Selling Member's Account." (pp. 43-44, Rollo)

The petitioner contends that the exchange contracts, subject matter of the litigation, are not covered by the above rule because the rule refers to delivery of stocks made within a reasonable time whereas in the case at bar, delivery must be made within the stipulated time of ten (10) to twenty (20) days. LLL further argues that the rules and regulations of the exchange govern only the "rights and duties of its members among themselves" and do not

affect contracts involving third persons.

The petitioner's contentions are untenable.

Paragraph 3, Section 1 of Article V states: "Fifteen days shall be considered a reasonable period of time within which to effect delivery unless otherwise stated in the sales contract." The rule is clear that the exchange contracts in question fall under the last clause. The parties have merely specified the period within which delivery must be made which is ten (10) to twenty (20) days. Such qualification does not in any way change the nature of the exchange contracts. The buying member's duty under the rules remains.

Paragraph 1 of said rule states that: "x x x it shall be the buying member's duty to advise the selling member in writing", in case the latter fails to deliver the stocks sold under "delayed delivery contract". The rule further stipulates that "in the event the selling member is unable to make delivery within said period, the buying member shall deliver a copy of his letter of demand to the chairman of the Floor Trading and Arbitration Committee who may purchase the shares for the selling member's accounts." (Paragraph 4, Sec. 1, Article V, Rules and Regulations)

More than any other person, it is the buyer who should be aware whether or not what he purchased has been delivered to him. Because of this awareness, the Exchange imposes upon him the primary obligation of giving notice.

The rule also provides a remedy in case the selling member fails to deliver the stocks ordered from the seller. It would, therefore, be safe to say that unless the buying member timely notifies the seller that he is canceling his orders, then the orders placed by the buying member still stand. LLL must, therefore, accept the delivery of the shares of stocks. If the shares had doubled or trebled in value, it could demand delivery of what it purchased. The rule is clear. It was the duty of LLL to make a demand in the event CMS failed to deliver within the stipulated time. We quote with favor the distinction made by the trial court between a "duty" and a "right":

"The wording of Article V, Sec. V, Sec. 1 of the Exchange Rules is clear and indubitable. Under the same, as already stated, when plaintiff failed to deliver the Benguet Consolidated shares after the lapse of 20 days it was the unavoidable duty of the defendant to make a demand for the delivery. It must also be noted that Article V, Section 1 of the Exchange Rules does not vest the defendant with the right to make a demand nor the right to rescind once the plaintiff defaults. On the contrary, it expressly imposes on said defendant the duty to make a demand, thus clearly implying that even if plaintiff defaulted, rescission by defendant was impossible.

"Right is one thing; duty is quite another. A right need not be exercised. It might even be waived. A duty, however, must be performed and one who does not discharge the same must necessarily be prepared to face the consequence of his dereliction or omission.

"Had Article V, Section 1 of the Exchange Rules vested the defendant with the right to make a demand, perhaps, such a right may be waived and, after such a waiver, automatic rescission might ensue if really time were of the essence of the Exchange Contracts. But this is not so, Article V, Section 1 imposes upon the defendant the duty to make a demand and this duty cannot be waived, as all duties cannot be waived. And if defendant does not perform such a duty, it is not far fetched to say that it can be called upon to perform such duty even upon belated tender of delivery of the Benguet Consolidated shares by the plaintiff.'

"It must be added thereto that rescission under the New Civil Code was not even contemplated by said Rules because under the oft-mentioned Section 1, Article V of the Rules, in the event that the selling member fails to deliver the ordered shares despite the demand of the Buying Member, the recourse of defendant-appellant under said Rules is to deliver a copy of his letter of demand to the Chairman of the Floor Trading and Arbitration Committee who is authorized to purchase the same from the Selling Member's Account." (pp. 86-87, Rollo)

Moreover, the contention that rules and regulations of the exchange should not apply to or affect contracts which may involve third persons is likewise without merit.

In the case of *Carolina Industries, Inc., v. CMS Stock Brokerage, Inc.* (97 SCRA 734) we held that the rules and regulations of the Stock Exchange form part of the contract. We stated:

"We have consistently held that under such situation, such rules and regulations become special terms of the contract. It was held in *Benett v. Logan*, (80 Cal. App. 571, 252 Pac. 662 [1972]) that, where a customer orders securities to be purchased 'subject to the rules, regulations, and customs of the exchange in which the order is executed', such rules, regulations and customs thereby become special terms of the contract. This very same doctrine has been consistently adopted in interpreting contracts in this jurisdiction and We have never deviated therefrom. (*De Borja v. CAR*, 79 SCRA 557; *Basa, et al., v. FOITAF, et al.* 61 SCRA 93; *Central Bank v. Hon. Cloribel and Banco Filipino*, 44 SCRA 307; *Maritime Co., of the Phils. v. Reparations Commission*, 40 SCRA 70; *Lakas ng mga Manggagawang Makabayan v. Hon. Carlos Abiera*, 36 SCRA 437)." (at 790)

In the instant case, the shares of stocks were bought by petitioner for and on orders of Rene Ledesma, Jose Ma. Lopez, Alfredo Ramos and Cesar A. Lopez, Jr. As a general rule and subject to certain limitations, a customer who engages a broker to execute an order on a stock or produce exchange confers authority on such broker to conduct the transaction according to the rules and established customs of the exchange on which he deals, and the customer is thereby bound by such rules and customs, even though he may not have actual knowledge of them. (*Clews v. Jamieson*, 182 US 461, 45 L Ed 1183, 21 S Ct. 845; *Hansen v. Boyd*, 161 US 397, 40 L Ed 746, 16 S Ct. 571; *Bibb v. Allen*, 149 US 481, 37 L Ed 819, 13 S Ct 950; *Cisler v. Ray*, 213 Cal 620, 2 P 2d 987, 79 A LR 584; *Scott v. Shook*, 80 Colo 40, 249 P 259, 47 A LR 1108; *Skiff v. Stoddard*, 63 Conn 198, 26 A 874, 28 A 104). There are certain limitations such as when the rules or customs of the exchange vary or contradict the contract between the customer and his broker, or change the legal relations of the parties (*Irwin v. Williar*, 110 US 499, 28 L Ed 225, 4 S Ct. 160; *Baker v. Drake*, 66 NY 518) or when they are illegal or unreasonable (*Scott v. Shook*, supra; *Hallet v. Aggergaard*, 21 SD 554, 114 N.W. 696) where the customers are not bound. However, these limitations are not at all attendant in the present case. By its very nature, the rule calling for notice or advise to the selling member in the event of delayed delivery or bringing the matter to the Floor Trading and Arbitration Committee of the Exchange is one which should also apply to the real buyers. Hence, the exchange contracts in question are definitely subject to the rules and regulations of the exchange.

Furthermore, the petitioner contends that CMS has likewise violated the rules and regulations particularly paragraph 5, Section 1 of Article XI on Delayed Delivery which reads:

"On the agreed date of delivery, notice in writing shall be given by the selling broker to the buying broker, said notice to reach the buying broker not later than 4:00 p.m. and both brokers shall report it to the clearing house in the same manner as if it were a transaction for that day."

The petitioner argues that CMS has violated the above rule and is, therefore, in estoppel to set up the violation of Article V committed by the petitioner.

The respondent court disposed of this contention as follows:

"As already shown earlier, the failure of plaintiff-appellee to deliver the ordered shares to defendant-appellant within twenty days is of no significant consequence under Section 1, Article V of the Rules and Regulations of the Exchange. Said Rules do not give plaintiff-appellee any value advantage over defendant-appellant. To repeat, due to its failure or refusal to make the delivery, it may be compelled through the Chairman of the Floor Trading & Arbitration Committee to purchase the same for the Selling Member's Account. Hence, there is no place for the application of the doctrine of 'in pari delicto' in the present case. (pp. 47-48, Decision, Annex

"A")." (p. 29, Rollo).

We agree that time is of the essence in these particular contracts because of the speculative and fluctuating value of stocks. Delivery four (4) months after purchase is obviously not within the contemplation of the sale of shares in question. Because of the peculiarity of the business involved in a stock exchange, rules were adopted to govern not only the members but the transactions between the members as well. (*Pacaud v. Waite*, 218 Ill. 138, 75 NE 779). And as long as these rules are not contrary to law, then the courts will not interfere to control their enforcement. (*In re Rosenbaum Grain Corporation*, D.C. Ill. 13 F Supp. 601; *Walsh v. New Orleans Cotton Exchange*, 177 So 68, 188 La 338) Under the applicable rule, the failure of the seller to deliver the stocks does not give the buying member the right to rescind the contract. If the selling member fails or refuses to deliver, it may be compelled through the Chairman of the Floor Trading and Arbitration Committee to purchase the same for the selling member's account. There being a special remedy agreed upon by the members, the right of rescission under the New Civil Code as invoked by the petitioner is inapplicable. On this point, we adopt the lower court's conclusions as it states:

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"Basic is the rule that in the interpretation of rules, regulations or statutes, the interpretation that should be adopted is the one which would subserve the ends of justice and equity. To interpret now Article V, Section 1 of the Exchange Rules the way defendant would like this Court to do would result in the anomalous situation in which defendant would have the sole say on whether or not to accept delivery. If the price of Benguet Consolidated shares were up, it could demand delivery; but if the price were down, it need not make such a demand and would even have the right to rescind. This is practically allowing defendant to have its cake and eat it, too. This Court, nay, any court, cannot give its imprimatur to such heads-I-win-tails-you-lose interpretation.

"Furthermore, exchange contracts are peculiar in certain ways. Firstly, they are affected with public interest. The business of stock exchange is fueled by the money of the investing public and, therefore, they are, or should be, clothed with greater sanctity than ordinary contracts between private persons. Consequently, unless there are clear and insuperable obstacles to their enforcement, they should be enforced. The investing public must be absolutely assured that, once a contract shall have almost the finality of death. (sic) This Court can well imagine what pandemonium would ensue if, after a trader in securities buys, say, 1,000 shares of a certain company, sells after a rise in price of two points, buys back after one hour 500 of said shares after a down fluctuation of three points, sells again 450 of same shares and then, after the day's closing his original purchase of 1,000 shares is questioned! Multiply this instance a hundred times, and this in a conservative estimate in an active market, and it can be readily seen that stock exchange operation would be impossible if exchange contracts are not violated. (sic)

"Secondly, exchange contracts are entered into with speed. They can be closed in less than ten seconds flat even if they involve thousands of pesos. Therefore, the Exchange Rules must be interpreted to assure enforcement.

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"Thirdly, the stockbrokers usually do not invest their own money but their clients'. Thus, the investor is practically dealing, through his broker, with people who are complete strangers to him. He most probably has not even heard of them. Consequently, exchange contracts, although entered into by stockbrokers, are practically between people unknown to each other. The inviolability of exchange contracts and their enforcement must, therefore, be guaranteed or else no stock exchange is possible. That is why when Article V of the Exchange Rules on delayed delivery transactions was amended by the addition of Section 5 thereunder, the said section, in a language clear and unmistakable, stated that 'the contract must be enforced by compelling the broker to accept and pay for them.

"If this Court is reciting all this, it is simply to show that even considerations of public policy demand that the defendant must be compelled to accept the delivery of the disputed Benguet Consolidated shares and to pay for them. Any other interpretation of the Exchange Rules by which the defendant would be allowed to shirk its responsibility to accept the shares would destroy the Exchange itself." (pp. 92-94, Rollo)

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On December 14, 1970, the Board of Governors of the Makati Stock Exchange amended the Rules to cover the situation which led to the instant litigation. The new Section 5 of Article V reads:

"Sec. 5. - Members transacting on delayed delivery basis are required to comply strictly with the provisions of Section 1, Article V, above quoted and Section 1, paragraph 5, Article XI of the Clearing Rules.

"Failure to comply thereto will subject the defaulting broker to a fine of 10% of the value of the transaction but not exceeding P6,000.00 plus payment in interest from date of default and in the latter case, the amount goes to the other broker.

"Should either party fail to comply with their respective duties under the contract, both will be fined 10% of the value of the transaction but not exceeding P6,000.00 each for the first offense; suspension for a period of five (5) trading days for the second offense in addition to the fine herein prescribed, and for the third offense expulsion.

"Despite all these penalties, the contract must be enforced by compelling the selling broker to deliver the shares and the buying broker to accept and pay for them. (Record on Appeal, pp. 340-341), pp. 89-90, Rollo).

The amendment, of course, cannot apply to the August 14 and 26, 1969 transactions. The rules of Exchanges may be amended and revised in the light of changing conditions (*Exchange Buffet Corporation v. New York Stock Exchange*, 244 F 2nd 507) but the amendments cannot be made retroactive in their operation (*M. Roth and Co. v. New York Mercantile Exchange*, 262 N.Y.S. 687, 146 Misc. 644). At any rate, while not applicable, the amended rule illustrates what those directly affected by exchange transactions, the persons with special expertise in the matter, consider as the most fair, just, and equitable method of solving similar problems.

WHEREFORE, the petition is hereby DISMISSED for lack of merit. The questioned decision of the respondent court is AFFIRMED.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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