

A. MAGSAYSAY, INC., PLAINTIFF AND APPELLEE, VS. CEBU PORTLAND CEMENT CO., DEFENDANT AND APPELLANT.*G.R. No. L-9098. November 26, 1956*

Ponente: REYES, J.B.L., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/52ebda75997e/>**REYES, J.B.L., J.:**

On occasion of the opening of its cement factory at Bacnotan, La Union, the Cebu Portland Cement Co., a government controlled corporation, desired to contract for the hauling of coal from its mines at Malangas, Zamboanga to Bacnotan, and circularized to shipping companies an invitation to submit quotations until December 18, 1953. On December 1, Mr. Roberto Ho, traffic manager of A. Magsaysay, Inc., a Philippine corporation, submitted a written proposal on behalf of said corporation containing prices, terms and conditions (Exhibits A and A-1). Three other companies also submitted quotations.

On January 5, 1954, the Cement Company's Board of Directors resolved to call for bids for the transportation of coal by water from Malangas to San Fernando, La Union; but upon representations by A. Magsaysay, Inc. that it had submitted the lowest quotation, as confirmed by Mine Superintendent Norberto Gapud, the Board cancelled the call for bids, and instead, on January 7, 1954, adopted Resolution No. 417, to the effect that—

"Resolved, to direct the management as it is hereby directed, to enter into a contract with A. Magsayasy, Inc., for the transportation of coal from Malangas, Zamboanga, to San Fernando, La Union by water, at the rate of P7.84 per ton, for a total of 30,000 tons, the entire shipment to be effected within a period of four (4) months, or at the rate of 7,500 tons per month. The Board further authorize the General Manager to work out the other details of % this contract." (Rec. App. pp. 47-48.)

On January 8, 1954, Mr. Ho, representing the Magsaysay Co., submitted to the Cement Co.'s Manager, Eduardo Taylor, a draft (Exhibit D) of a Charter Party agreement; but after thorough discussion with Mine Superintendent Gapud and Cement Company's counsel Candido B. Barcelona, the draft was revised, simplified and shortened from five to three pages. This final draft (Exhibit E; Exhibit 8) was submitted to Mr. Taylor on January 17, and Mr-Taylor submitted it (Exhibit I) to his Board of Directors the next day. The Board, instead of acting on the revised draft, approved a new resolution revoking the previous resolution No. 417 (ante) and directing the management to submit the matter anew "to1 public bidding with such specifications as may be necessary, in order to place all bids on equal footing." (Exhibit 9.):

"5. Transportation of Coal from Malangas, Zamboanga, to San Fernando, La Union—

Resolution No. 417 of the Board of Directors, approved on»January 7, 1954, directed the Management to enter into a contract with the A. Magsaysay, Inc. for the transportation of coal from Malangas, Zamboanga, to San Fernando, La Union, covering 30,000 tons of coal at the rate of P7.84 per ton. It appearing, however, that there had been subsequently received two letters in connection with this matter—one from the "Y" Shipping Corp. in which they offered to reduce their previous freight rate to f6.85 per ton, and another from Gonzalo L. Manuel & Co. inquiring as to the action we have taken on their previous offer—the Board, after due deliberation, reconsidered said Resolution No. 417 and directed the Management to submit the matter to public bidding with

such specifications as may be necessary, in order to place all probable bidders on equal footing."

Notified of the last resolution, A. Magsaysay, Inc. filed suit on February 2, 1954, in the Court of First Instance of Manila (Civil Case 21828); alleging that a contract had been perfected between it and the Cebu Portland Cement Co.; that the latter refused to comply with the same; and prayed for an award of P50,000 damages.

After answer and trial, the court below, while denying that Resolution No. 417 had the effect of an unconditional acceptance of plaintiff's offer, nevertheless held that the final draft of agreement (Exhibit E or 8) was definitely agreed upon between Mr. Roberto Ho for the plaintiff and Mr. Eduardo Taylor for the defendant, and constituted a binding contract between both companies; and awarded to plaintiff damages in the sum of P57,192 plus P5,000 by way of counsel fees and costs.

From this judgment the Cement Company appealed directly to this Court, in view of the amount involved. The case was finally submitted for decision on April 27, 1956.

The court below was undoubtedly correct in declaring that no contract was perfected by the adoption of Resolution No. 417 of the Cement Company's Board of Directors, because the resolution in addition to fixing the total amount of coal (30,000 tons) to be transported at the rate of 7,500 tons a month for P7.84 per ton, "further authorized the General Manager to work out the other details of this contract", showing that there were other material points upon which the parties had not yet come to an agreement. While Article 1319 of the new Civil Code prescribes that

"consent is manifested by the meeting; of the offer and the acceptance upon the thing and the cause which are to constitute the contract," this rule does not apply to a situation like the one before us, wherein one or both parties consider that other matters or details, in addition to the subject matter and the consideration, should be stipulated and agreed upon. In that case, the area of agreement must extend to all points that the parties deem material or there is no contract. Thus, an acceptance "subject to the terms of a contract being arranged between the solicitors of both parties" has been held to constitute no binding agreement (*Winn vs. Bull*, 7 Ch. D. 29, 6 EEC. 171; *Honeyman vs. Marryat*, 10 Reprint, 1236; *McIntyre vs. Wood*, 9 Can. S. C. 556; 13 C. J., p. 282, note 86).

Another reason is that Resolution No. 417 left the final decision to the General Manager whom it empowered to "work out the other details of the contract" (17 C.J.S. p. 384; *Wilhelm vs. Wood*, 135 NYS. 930).

We differ, however, from the trial court in its holding that the draft, Exhibit E or 8, was finally assented to by the representatives of both parties, and constituted a binding agreement. The evidence shows that neither party was satisfied with the draft. Robert Ho, representing Magsaysay & Co., admitted that he wanted to "retain that clause that the time for waiting for berth be counted for time allowed for loading and unloading, (evidently referring to the original provision that "Time lost in waiting for berth to count as loading time", eliminated in the final draft); but was met by Mr. Taylor, Manager of the Cement Company, and with the remark "This is one chance your company had (has) to take" (tr. p. 15). On the other hand, Mine Superintendent Gapud, who had been deputized to work with Ho on the terms of the draft, was insisting that the discharge rate of 1,000 tons per day should be reduced to 600, and the loading from 1,500 tons to 1,000 or 1,200 tons (t.s.n. p. 96); but as Ho would not agree, Gapud left the issue for the manager (Taylor) to decide.

There is no preponderance of evidence to show that these differences of opinion were finally ironed out. While Robert Ho contended that after the draft was finished, he had an interview with the Cement Company's Manager, Taylor, and, upon the latter's demand, he finally waived his objections and agreed to the terms of the draft (Exhibit E of 8) as written, that testimony was not corroborated. More than this, it was contradicted by Taylor, and specially witness Gapud, who denied that Ho discussed the draft with Taylor. Gapud asserted that the draft

was submitted to Taylor by him alone with his own objections thereto (t s. n. p. 111-112). That no final understanding was arrived at is apparent from the fact that the final draft (Exhibit 8) was neither signed nor even initialled by the parties before they separated. It is of course true that if a definite agreement had been reached, the contract would be binding regardless of the lack of a written memorial; but the failure to sign or initial the alleged draft off agreement, admittedly drawn up after laborious discussion and bargaining, is circumstantial evidence that neither party considered that a binding agreement had been attained, corroborating the stand of the appellant cement company.

Our conclusion is further supported by the testimony of Taylor that after he was informed by his subordinates, Gapud and Barcelona, that appellee's representative, Robert Ho, would not give concessions, he (Taylor) decided to leave the whole matter to the Board of Directors so that at its meeting these points could be discussed and decided; and this is confirmed by the written memorandum of Taylor to the Board, dated January 18, 1954, "submitting for the approval of the Board a draft of the Charter Party agreement that we have worked out in conjunction with A. Magsaysay, Inc." (Exhibit I). The memorandum strongly indicates that Taylor himself did not believe that the draft was binding at the time; otherwise he would have submitted it to the Board for information or ratification, and not for approval.

The Court below rejected Mr. Taylor's version of what transpired, for the reason that "it was unnecessary for Mr. Taylor to refer Exhibit E to "the defendant's Board of Directors" for final approval "as no such approval was required" and Mr. Taylor "was given ample discretion to enter into a contract with the plaintiff-appellee." This reasoning ignores the fact that while Taylor was given authority to contract, there was nothing to prevent the latter from not making use of the authority granted, and instead remit the final decision to the Board, in the same way that Gapud, notwithstanding his objections to the draft, left the final decision thereon to Taylor, as General Manager. It is an unfortunate fact that the present tendency of public officials (save rare and honorable exceptions) is to evade responsibility whenever they can; afraid of doing the wrong thing, they end by doing nothing.

Hence, as between the picture drawn by Robert Ho in his testimony, of manager Taylor resolutely demanding that he agree to the draft, Exhibit E; and the situation pictured by the witnesses for the appellant, of Mine Superintendent Gapud leaving the decision to the Manager, Taylor, and the latter referring in turn the matter to his Board of Directors for final ruling, we do not hesitate to accept the latter version as the more probable and consonant with the usual run of official conduct.

We conclude that the preponderance of evidence is that no agreement was reached by the parties on the draft (Exhibit E or 8) and hence, that no contract was perfected between appellant and appellee. There being no contract, the reasons of the Board of Directors of the Cement Company in calling for another bidding become entirely immaterial. Wherefore, the award of damages made by the lower court finds no support in law.

The decision appealed from is reversed and the defendant Cebu Portland Cement Co. absolved from the complaint. Costs against plaintiff-appellee. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Concepcion, Endencia, and Felix, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.