

REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. LITTON & CO., ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-5018. November 28, 1953

Ponente: PARAS, C.J.

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PARAS, C.J.:

This is an appeal by the defendants Litton & Co., G. Litton and Central Surety Co., from a decision of the Court of First Instance of Manila the dispositive part of which reads as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants for the sum of One hundred sixty-seven thousand and one hundred ninety-nine pesos and sixty-five centavos (P167,199.65), ordering the defendants to pay to the plaintiff said amount, out of which the sum of Forty thousand six hundred four pesos (P40,604) shall be paid jointly and severally by Litton & Co., or George Litton and the Central Surety Co., Inc. and the rest by Litton & Co., or George Litton, and against its co-defendant Litton & Co. and/or George Litton for any amount which said Central Surety Co., Inc., shall have paid to the plaintiff as a result of this judgment. With costs against the defendants."

The allegations of the parties in their respective pleadings are correctly recited in the following passages of the appealed decision:

"The complaint alleges in the first cause of action that on December 22, 1945, the defendants Litton & Co. and George Litton, managing partner or agent of the defendant partnership, entered into a contract with the plaintiff to supply and deliver to the latter on or before March 1, 1946, 96,000 padlocks at P1.87 each, in accordance with the specifications and under the terms and conditions set forth in the said contract; that to guarantee and secure the faithful performance of their obligation, the co-defendant Central Surety Co., Inc., executed on January 3, 1946, a surety bond in favor of the plaintiff for P35,904; that the defendant Litton & Co. delivered on or about April 8, 1946, 34,200 padlocks only, which is much less than the quantity called for in the contract, and failed to deliver the balance of 61,800 padlocks which were to be used during the elections of April 23, 1946.

"The complaint further alleges that for such failure of the defendant Litton & Co., the plaintiff was compelled to make open market purchases of 25,613 padlocks, thereby incurring losses and damages in the amount of P176,243.41, representing the difference between the price actually paid for said open market purchases and the price which the government would have paid to Litton & Co. in accordance with the contracts; that due notice was served on the co-defendant Central Surety Co., Inc., of said failure on the part of Litton & Co. and of the co-defendant's liability on its bond, and that notwithstanding repeated demands made by the plaintiff upon the defendants', they failed and refused to pay the aforesaid amount.

"In its second cause of action the plaintiff alleges that on December 26, 1945, a contract was entered into between the plaintiff and the defendants Litton & Co., and George Litton, its managing agent or partner, whereby said defendants undertook to deliver to the plaintiff on or before March 1, 1946, quantities of indelible pencils, lead pencils, bottles of ink, pen points, chalks, clips, etc., with a total value of P25,979.55, subject to the terms and conditions of said contract; that to guarantee and secure the faithful performance of

that contract by Litton & Co., the Central Surety Co., Inc., executed on January 3, 1946, a surety bond in favor of the plaintiff in the sum of P4,700; and that the defendant Litton & Co., in violation of the terms and conditions of said contract failed to deliver the articles called for on or before the stipulated date, said articles to be used during the elections of April 23, 1945.

"The plaintiff further alleges that for such default and failure of the defendants, the plaintiff was compelled to make open market purchases of said articles, thereby having suffered damages and losses in the sum of P20,164.17, representing the difference between the price of said articles purchased in the open market and the price stipulated in the contract; that the co-defendant Central Surety Co., Inc., was duly notified of the failure of Litton & Co. to deliver said articles, and its liability under its bond; and that notwithstanding demands made by the plaintiffs upon said defendants, they refused to pay the aforesaid amount of P20,164.17.

"The plaintiff prays under the first cause of action that judgment be rendered in its favor and against the defendant Litton & Co. ordering the latter to pay the sum of P176,243.41 with legal interest thereon from the filing of the complaint until fully paid, and that out of said amount the Central Surety Co., Inc., be ordered to pay jointly and severally with Litton & Co. the sum of P35,904; and with respect to the second cause of action, the plaintiff prays that Litton & Co. be ordered to pay to the plaintiff the sum of P20,164.17 with legal interest thereon from the filing of the complaint and that out of said amount the sum of P4,700 be paid jointly and severally by Litton & Co. and the Central Surety Co., Inc. The plaintiff further prays that in default of Litton & Co. to pay the aforesaid amounts, George Litton personally be ordered to pay the same as managing partner and/or agent of Litton & Co.

"In their joint answer, defendants Litton & Co., and George Litton allege that the contracts mentioned in the complaint are not the real contracts between the parties and do not express the real agreement between them; that it was agreed by and between the parties that the defendants, Litton & Co. and/or George Litton, would deliver the padlocks and the supplies called for in the two contracts provided the plaintiff should obtain shipping priority and the necessary export license to bring said articles from the United States to the Philippines, which terms and conditions were not embodied in the alleged contracts; that the defendant Central Surety Co., Inc., executed the two surety bonds under the same terms and conditions; and that the failure of said defendants to deliver the balance of the 96,000 padlocks and the stationery and office supplies called for in the contracts was due to plaintiff's failure to secure on time shipping priority and export license and also to fortuitous events and force majeure, beyond the control of said defendants.

"The defendants further allege that the purchases of padlocks by the plaintiff in the open market were made at exorbitant prices, much in excess of their ceiling prices which should not be more than 70 per cent over the landed costs; that the defendants are not liable for the alleged losses and damages resulting from said purchases, as their delay or failure to deliver the padlocks was due to plaintiff's fault and to circumstances beyond their control.

"By way of counterclaim the defendants Litton & Co. and/or George Litton allege that after the elections of April 23, 1946, more specifically on May 11, 14, and 16, the defendants delivered to the plaintiff 9,096 padlocks at P1.87 each, or with a total price of P17,009.52 and that the plaintiff, notwithstanding repeated demands by said defendants, failed and refused to pay said amount; and as additional counterclaim the said defendants allege that on various dates in April and May, 1946, stationery and office supplies were delivered to the plaintiff at the agreed price of P9,806.94, and that notwithstanding repeated demands upon the plaintiff, it refused and failed to pay said amounts.

"The defendants Litton & Co. and George Litton pray that the complaint be dismissed and that the plaintiff be ordered to pay to said defendants the sum of P17,009.52 under the first counterclaim and the sum of P9,806.94 under the second counterclaim.

"The plaintiff, in its answer to the counterclaims, admits their existence and its liability under the same, but alleges that the total amount of the counterclaims should be credited to plaintiff's claim against the defendants.

"In its answer the defendants Central Surety Co., Inc., admits the execution of the two surety bonds above stated, but denies its liability under the same. It also alleges, as an affirmative defense, that plaintiff's cause of action is barred by the expiration of the period stipulated in the bond. This defense was first urged in a motion to dismiss, which was denied upon the grounds stated in the orders of August 30 and September 8, 1948. The answer of the Central Surety Co., Inc., includes a cross-claim against the defendant George Litton for whatever amount the plaintiff may collect from the Central Surety Co., Inc., in this case."

The first delivery made by Litton was on April 18, 1946, consisting of 34,200 padlocks which were fully paid by the plaintiff. The latter, however, imposed upon Litton for his delayed delivery a penalty equal to 1/10 of one per cent per day of the total value of said padlocks in accordance with paragraph 4 of the "Important Conditions" appearing at the back of the contract, which reads as follows:

"4. Contractor's failure to make delivery, when due, will authorize the Purchasing Agent to, in his discretion, impose a penalty. If he decides to do so, either of the following penalties shall be imposed: (a) to deduct for each day of delay in delivery after the period granted, a liquidated damage in the amount of 1/10 of 1 per cent per day of the total value of the contract, or, if the contract has been partially filled within the stipulated time, the total value of the unfilled portion thereof; or (b) to make an open market purchase of the supplies that the contractor failed to deliver and to charge to him the excess in price, if any. In either case, the Government reserves the right to rescind the contract. The contractor hereby authorizes the purchasing agent to deduct the value of the penalty imposed from any money due, or which may become due, the contractor, or to recover from the contractor's bond filed under this contract, if there is any."

On April 20 and 22, 1946, Litton further delivered 2,000 boxes of paper clips costing P180. As no other deliveries were made, and under the authority contained in the above-quoted paragraph 4, the plaintiff purchased in the open market within a few days before the elections the following:

Articles

Quantity

Amount Paid

Padlocks

25, 613

P224,216.72

Pencils, indelible

90,286

16,892.68

Pencils, lead

47,800

2,390.00

Pen points, Esterbrook

125,552

4,557.01

Ink, stamp pad

16,000

11,200.00

P259,366.41

TOTAL

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The sum of P176,243.41, sought to be recovered under the first cause of action and the sum of P20,164.17 claimed under the second cause of action respectively represent the difference between the prices of the foregoing articles stipulated in Litton's contract and the prices paid by the plaintiff in the open market.

The trial court allowed the plaintiff's claim as to both causes of action, but granted Litton's counterclaims in the total sum of P26,816.45 representing the unpaid price of padlocks and stationery delivered to the plaintiff after the elections, and deducted also the sum of P2,391.47 which the plaintiff collected from Litton as penalty for delayed delivery (before the elections) of 34,200 padlocks.

The principal issue, reduced in its simplest form, is whether, as contended by the plaintiff-appellee, the defendant George Litton (whose business name is Litton & Co.) unconditionally bound himself to supply and deliver to the plaintiff 96,000 padlocks and a quantity of stationery and office supplies on or before March 1, 1946, or whether, as claimed by the defendants, the contract was for George Litton to deliver the said articles subject to the condition that the plaintiff would timely obtain the corresponding export license and shipping priority.

The theory of the plaintiff is that Litton's contract is evidenced by purchase order No. 1896, dated December 22, 1945, for 96,000 padlocks at P1.87 each "Delivery: not later than March 1, 1946," and by purchase order No. 3826 for stationery and office supplies dated December 26, 1945, "Delivery—On or before March 1, 1946." Upon the other hand, Litton claims that these two purchase orders do not represent the true agreement and that his bid (previously accepted by the plaintiff) was conditioned by his letter dated December 12, 1945, and worded as follows: "Reference to Circular Proposal No. 13 to be opened at 10 a.m., December 13, 1945, we enclose herewith two copies of our bid on the above proposal. For all items in which we gave you a quotation, shipment

will be made from the United States during the month of January, 1946, provided we are able to obtain export license and shipping space and provided further we are given the award within three (3) days from today. This will enable goods to arrive in Manila for delivery during March." Litton's defense is therefore that he is excused by the plaintiff's failure to obtain in due time the export license and shipping priority.

The trial court held that although the conditions specified in the letter of December 12 were considered by the plaintiff in connection with its orders, it was still Litton's sole obligation to obtain the necessary export license and shipping space; and that although the plaintiff made certain efforts to expedite the issuance of the necessary license, the same "were in the nature of a friendly assistance to the defendants and can in no way be interpreted or construed as if the plaintiff were the party bound to secure for itself the export license or shipping space."

We are convinced that George Litton undertook to deliver the padlocks and stationery in question not later than March 1, 1946. It is significant that in the Circular Proposal No. 13 issued on November 27, 1945, to local dealers, calling for bids, it was expressly stated that the articles were for election purposes, and the bidder was therefore required to "state the shortest time of delivery, which should not be later than March 1, 1946. Deliveries made before March 1 will be preferred." It is then preposterous to suppose that delivery after the elections would ever be contemplated or accepted. More significant is the fact that on December 15, 1945, or subsequent to the letter of December 12, relied upon by Litton, and after he was informed by the committee on award that his bid would be accepted if the condition mentioned in said letter was eliminated, Litton wrote a note to the purchasing agent, stating as follows:

"Sir:

"We have the honor to inform you that the Padlocks, 1 5/8" X 1 5/8", rustless, Eagle brand, are manufactured in the United States.

"For immediate shipment our principals have 30,000 pieces for the first delivery arriving in Manila about the middle of February, and the balance of 66,000 not later than March 1, 1946.

"It is, however, understood that your Office will give us a letter certifying that the padlocks are urgently needed by the Philippine Government so that the export license can be secured without delay, thus making the first shipment of 30,000 arriving in Manila about the middle of February, 1946.

"Please let us know immediately so we can notify our principals for immediate shipment as above stated.

"Very truly yours,

"LITTON & COMPANY

"(Sgd.)

JUAN S. CANLAS"

The foregoing letter shows that Litton merely expected the plaintiff to give a certification that the padlocks were urgently needed by the Philippine Government so as to warrant the early issuance of the license. Moreover, Litton subsequently filed two performance bonds, executed by him as principal and the Central Surety Co., as surety.

With reference to the padlocks, the bond recited in part as follows:

"WHEREAS, the above bounden principal, on 22nd day of December, 1945, entered into a Contract with the Division of Purchase and Supply, Department of Finance, Manila, to fully and faithfully guarantee the delivery of 96,000 padlocks, * * * No. 13, Order No. 1896, said delivery to be made not later than March 1, 1946.

"WHEREAS, said Division of Purchase and Supply requires said principal to give a good and sufficient bond in the above stated sum to secure the full and faithful performance on his part of said LITTON & COMPANY;

"NOW, THEREFORE, if the principal shall well and truly perform and fulfill the undertakings, covenants, terms, conditions, and agreements stipulated in said contract, then, this obligation shall be null and void; otherwise it shall remain in full force and effect."

With reference to the stationery, the bond provided as follows:

"WHEREAS, the above bounden principal, on 26th day of December, 1945, entered into a contract with the Division of Purchase and Supply, Department of Finance, Manila, to fully and faithfully guarantee the delivery of the following:

192,000

Pcs. Pencils, indelible, hard, U. S. make.

64,000

Pcs. Pencils, lead, medium No. 2, w/erasers, U. S. make.

16,000

Bots. Ink, stamp pad, violet, 2-oz. bottle U. S. make

16,000

Bots. Ink, stamp pad, violet, 2-oz. bottle U. S. make

128,000

Pcs. Chalks, white, enameled 1-gross to box, U. S. make.

128,000

Pcs. Pen points, Esterbrook No. 14, or equal, 1-gross to box, U. S. make.

8,000

Boxes Clips, paper Gem No. 1, 100 clips to box, U. S. make.

8,000

Cones Pins, office, No. 4, U. S. make.

strictly in accordance with Circular Proposal No. 13; Order No. 3826. Said delivery to be made on or before March 1, 1946.

"WHEREAS, said Division of Purchase and Supply requires said principal to give a good and sufficient bond in the above stated sum to secure the full and faithful performance on his part of said LITTON & COMPANY:

"NOW, THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements stipulated in said contract then, this obligation shall be null and void;

otherwise, it shall remain in full force and effect."

These bonds, prepared by the surety company on the basis of data furnished by Litton, made express reference to and guaranteed the fulfillment of the contracts entered into on December 22 and 26, 1945, the very purchase orders Nos. 1896 and 3826; and under said bonds delivery was to be made on or before March 1, 1946. This negatives the contention that the delivery of the padlocks and stationery was subject to any contingency, much less to plaintiff's ability to secure export license and shipping priority.

Moreover, undoubtedly foreseeing his inability to meet the deadline, Litton wrote a letter to the purchasing agent dated February 28, 1946, asking for an extension of time; and inferring to said letter he testified that "I asked for an extension because I could not deliver the goods on March 1, 1946." Said extension, which was ignored by the purchasing agent,[1] was sought under paragraph 2 of "Important Conditions" of the contracts.

It is true that the Philippine Government exerted some efforts[2]with a view to the granting by the United States authorities of the necessary export license and shipping space, but the same do not prove that it was plaintiff's obligation to do so or that Litton's duty to deliver the articles on or before March 1, 1946 was conditional. Said efforts were merely in furtherance of Litton's letter of December 15, 1945 in which he asked the plaintiff to certify that the padlocks were urgently needed by the Philippine Government so that the export license might be secured speedily. Neither does the fact that the license was issued in the name of the plaintiff show that the latter assumed the obligation of obtaining the same, the detail being undoubtedly formal. As a matter of fact, it was the U. S. exporter Gindoff & Co., after failing to get a license directly, that caused its issuance in the name of the Philippine Government. At any rate, according to Litton's letter of December 12, 1945, shipment would be made from the United States during the month of January, 1946, provided he would obtain export license and shipping space; and it is admitted in the brief for the appellants that all the padlocks and stationery were placed in the New York docks in said month in spite of the delay in the issuance of the license, with the result that Litton's complaint about any delay on the part of the plaintiff is immaterial. Again, even in said letter of December 12, Litton announced that, when shipment was made in January, the goods would "arrive in Manila for delivery during March, 1946." We may also add that, as regards the stationery, no export license was required.

Upon the whole, we are of the opinion that Litton's contract with the plaintiff was unconditional. Indeed, in paragraph 2 of the "Important conditions" appearing at the back of the purchase orders, the following provision is made: "2. The stipulated delivery period shall not be exceeded. However, should there be delay in delivery, due to an act of the Government, to force majeure, or to a condition clearly beyond contractor's control, the Purchasing Agent may grant a reasonable time for extension, if applied before default is incurred. Deliveries made within the extended period of time shall not be subject to any of the penalties herein below provided." This makes Litton liable in all eventualities; and said clause is authorized by article 1105 of the old Civil Code which provides that "outside of the cases mentioned in the law and of those in which the obligation so declares, no one shall be responsible for events which could not be foreseen, or which having been foreseen were unavoidable." The result is that the appellants cannot invoke the delay in the issuance of the export license by the proper authorities, the fact that the ships carrying the supplies were not allowed to berth at the piers, or that one of the ships had to pass by Shanghai upon orders of the War Shipping Commission, and another vessel was stranded on Bonin Islands.

The contention that paragraph 2 of the "conditions" contained at the back of the contracts is contrary to law and public morals, because it makes Litton liable for any delay due even to an act of the Government, is of no moment, since it is not pretended in this case that Litton's default was caused by such an act.

It is also argued that the election of the plaintiff to impose the penalty equivalent to 1/10 of one per cent of the total value of the padlocks delivered on April 8, 1946, precluded the plaintiff from imposing the other form of

penalty, namely, to make open market purchases and to charge to the contractor the corresponding difference in price. This argument is without merit, because the first penalty is applicable to mere delay in delivery, and not to total failure to deliver, whereas the second penalty may be imposed in either case. To adopt Litton's theory would deprive the plaintiff of its right to purchase in the open market the supplies which Litton had failed to deliver.

Neither can we sustain the claim of Litton that there was mutual mistake on the part of the parties, in that both did not foresee the impossibility of compliance for causes beyond their control. Litton, an experienced businessman and aware of the difficulties and restrictions in bringing U. S. goods to the Philippines at the time he entered into his contract with the plaintiff, chose to bind himself to deliver the articles in question, undoubtedly in the expectation of and in return for the profits that would accrue under the contract.

A faint attempt has been made to show that Litton was merely an agent or broker of the U. S. exporter Gindoff & Co. There is absolutely no point in this aspect of the case, since in his bid, contracts, and performance bonds, Litton appears to be the sole contracting party.

According to the records, four of the vessels carrying the stationery and padlocks arrived in Manila on or before April 1, 1946, one vessel arrived in Manila on May 29, after deviating to Shanghai upon order of the War Shipping Commission, and the last vessel, carrying a cargo of padlocks, was stranded on Bonin Islands and its cargo was transferred to another vessel which arrived in Manila five months later. At the time the plaintiff made purchases in the open market two vessels, the SS Tarn, carrying stationery, and the SS Adrastus, loaded with padlocks, were inside the breakwater ready for unloading, but due to lack of berthing space at the piers, their cargo was unloaded and delivered to the plaintiff only after the elections. The total price of the padlocks delivered to the plaintiff computed at P1.87 each, is P17,009.52, and the total price of the stationery delivered to the plaintiff after the elections, is P9,806.94, and these amounts have not been paid by the plaintiff which claims that they should be deducted from the damages due from Litton. While Litton was not excused from performing his obligation, on purely equitable considerations we hereby reduce the damages awarded by the trial court by the sum of P90,000. This roughly represents the difference between the stipulated unit price of P1.87 under Litton's contract and the price paid in the open market by the plaintiff for the quantity of padlocks delivered by Litton to and accepted by the plaintiff after the elections, which articles were loaded in the SS. Adrastus which arrived in Manila on April 1, but was able to berth only on May 5. We are influenced by the fact that the purchases made by the plaintiff, at the time when a quantity of padlocks and stationery were inside the breakwater ready for unloading, were at black market prices, or over the ceiling rates fixed by the Government, in addition to the circumstance that the performance bonds required from Litton were only in the sums of P35,904 and P4,700. Of course, under the contract, the plaintiff was authorized to make open market purchases as a result of Litton's default, and in view of the attending urgency the plaintiff was compelled to pay higher prices; and Litton's criticism against said purchases is therefore not well taken. At any rate, Litton had not taken any steps to protect himself or minimize his damages by buying in the open market at lower prices than those paid by the plaintiff for the articles needed in the elections which Litton failed to deliver on time.

The position of the surety company is dependent upon that of Litton. As a matter of fact, said company had adopted Litton's brief. What we have stated as to Litton is therefore decisive as against the liability of the surety.

Wherefore, with the modification that Litton's liability for damages is reduced by P90,000, the appealed judgment is in all other respects affirmed. So ordered with costs against the appellants.

Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

[1] Under paragraph 2 of "Important conditions" of the contracts, the purchasing agent had the discretion to grant

or not to grant any extension.

[2] For instance, the Chairman of the Commission on Elections wrote a letter dated December 18, 1945, to the President of the Philippines recommending that arrangements be made with the Resident Commissioner of the Philippines in the U. S. so that Gindoff & Co. (Litton's agent in the U. S.) might be allowed to ship the padlocks immediately; and said letter was referred by the Office of the President to the Resident Commissioner, requesting assistance in securing priority in shipping space and export license from the U. S. authorities.

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