

**LA FUERZA, INC., PETITIONER, VS. THE HON. COURT OF APPEALS
AND ASSOCIATED ENGINEERING CO., INC., RESPONDENTS.***G.R. No. L-24069. June 28, 1968*

Ponente: CONCEPCION, C.J.

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Ordinary action for the recovery of a sum of money. In due course, the Court of First Instance of Manila rendered judgment for defendant, La Fuerza, Inc. - hereinafter referred to as La Fuerza - which was at first affirmed by the Court of Appeals. On motion for reconsideration, the latter, however, set aside its original decision and sentenced La Fuerza to pay to the plaintiff, Associated Engineering Co., - hereinafter referred to as the Plaintiff the sum of P8,250.00, with interest at the rate of 1% per month, from July, 1960 until fully paid, plus P500.00 as attorney's fees and the costs. Hence, this Petition for review on certiorari.

The facts, as found by the Court of First Instance and adopted by the Court of Appeals, are:

"The plaintiff (Associated Engineering Co., Inc.) is a corporation engaged in the manufacture and installation of flat belt conveyors. The defendant (La Fuerza, Inc.) is also a corporation engaged in the manufacture of wines. Sometime in the month of January, 1960, Antonio Co, the manager of the plaintiff corporation, who is an engineer, called at the office of the defendant located at 399 Muelle de Binondo, Manila and told Mariano Lim, the President and general manager of the defendant that he had just visited the defendant's plant at Pasong Tamo, Makati, Rizal and was impressed by its size and beauty but he believed it needed a conveyor system to convey empty bottles from the storage room in the plant to the bottle washers in the production room thereof. He therefore offered his services to manufacture and install a conveyor system which, according to him, would increase production and efficiency of his business. The president of the defendant corporation did not make up his mind then but suggested to Antonio Co to put down his offer in writing. Effectively, on February 4, 1960, Antonio Co submitted his offer in writing in a letter dated February 4, 1960, marked as Exhibit A in this case. Mariano Lim did not act on the said offer until February 11, 1960, when Antonio Co returned to inquire about the action of the defendant on his said offer. The defendant's president and general manager then expressed his conformity to the offer made in Exhibit A by writing at the foot thereof under the word "confirmation" his signature. He caused, however, to be added to this offer at the foot a note which reads: "All specifications shall be in strict accordance with the approved plan made part of this agreement hereof". A few days later, Antonio Co made the demand for the down payment of P5,000.00 which was readily delivered by the defendant in the form of a check for the said amount. After that agreement, the plaintiff started to prepare the premises for the installations of the conveyor system by digging holes in the cement floor of the plant and on April 18, 1960, they delivered one unit of 110' 26" wide flat belt conveyor, valued at P3,750.00, and another unit measuring 190' and 4" wide flat conveyor, valued at P4,500.00, or a total of P13,250.00. Deducting the down payment of P5,000.00 from this value, there is a balance of P8,250.00 to be paid by the defendant upon the completion of the installation, Exhibit B.

"The work went under way during the months of March and April, during which time the president and general manager of the defendant corporation was duly apprised of the progress of the same because his plant mechanic, one Mr. Santos, had kept him informed of the installation for which he gave the go signal. It seems

that the work was completed during the month of May, 1960. Trial runs were made in the presence of the president and general manager of the defendant corporation, Antonio Co, the technical manager of the plaintiff, and some other people. Several trial runs were made then totalling about five. These runs were continued during the month of June where about three trial runs were made and, lastly, during the month of July, 1960.

"As a result of this trial or experimental runs, it was discovered, according to the defendant's general manager, that the conveyor system did not function to their satisfaction as represented by the technical manager of the plaintiff Antonio Co for the reason that, when operated several bottles collided with each other, some jumping off the conveyor belt and were broken, causing considerable damage. It was further observed that the flow of the system was so sluggish that in the opinion of the said general manager of the defendant their old system of carrying the bottles from the storage room to the washers by hand carrying them was even more efficient and faster.

"After the last trial run made in the month of July and after the plaintiff's technical manager had been advised several times to make the necessary and proper adjustments or corrections in order to improve the efficiency of the conveyors system, it seems that the defects indicated by the said president and general manager of the defendant had not been remedied so that they came to the parting of the ways with the result that when the plaintiff billed the defendant for the balance of the contract price, the latter refused to pay for the reason that according to the defendant the conveyor system installed by the plaintiff did not serve the purpose for which the same was manufactured and installed at such a heavy expense. The flat belt conveyors installed in the factory of the defendant are still there. x x x

x x x x x x x x"

On March 22, 1961, the contractor commenced the present action to recover the sums of P8,250, balance of the stipulated price of the aforementioned conveyors, and P2,000, as attorney's fees, in addition to the costs.

In its answer to the complaint, La Fuerza alleged that the "conveyors furnished and installed by the plaintiff do not meet the conditions and warranties" (warranties?) of the latter, and set up a counterclaim for the P5,000 advanced by La Fuerza, which prayed that the complaint be dismissed; that its contract with the plaintiff be rescinded; and that plaintiff be sentenced to refund said sum of P5,000 to La Fuerza as well as to pay thereto P1,000 as attorney's fees, apart from the costs.

After appropriate proceedings, the Court of First Instance of Manila rendered a decision the dispositive part of which reads:

"WHEREFORE, judgment is hereby rendered rescinding the contract entered into by the parties in this case, marked as Exhibit A, and ordering the plaintiff to refund or return to the defendant the amount of P5,000.00 which they had received as down payment, and the costs of this action. On the other hand, defendant is ordered to permit the plaintiff to remove the flat belt conveyors installed in their premises. "

As above indicated, this decision was affirmed by the Court of Appeals, which, on motion for reconsideration of the plaintiff, later set aside its original decision and rendered another in plaintiff's favor, as stated in the opening paragraph hereof.

The appealed resolution of the Court of Appeals was, in effect, based upon the theory of prescription of La Fuerza's right of action for rescission of its contract with the plaintiff, for - in the language of said resolution - "Article 1571 of the Civil Code provides that an action to rescind 'shall be barred after six months from delivery of the thing sold' ", and, in the case at bar, La Fuerza did not avail of the right to demand rescission until the filing of its answer in the Court of First Instance, on April 17, 1961, or over ten (10) months after the installation of the conveyors in question had been completed on May 30, 1960.

La Fuerza assails the view taken by the Court of Appeals, on the ground: 1) that there has been, in contemplation of law, no delivery of the conveyors by the plaintiff; and 2) that, assuming that there has been such delivery, the period of six (6) months prescribed in said Art. 1571 refers to the "period within which" La Fuerza may "bring an action to demand compliance of the warranty against hidden defects", not the action for rescission of the contract. Both grounds are untenable.

With respect to the first point, La Fuerza maintains that plaintiff is deemed not to have delivered the conveyors, within the purview of Art. 1571, until it shall have complied with the conditions or requirements of the contract between them - that is to say, until the conveyors shall meet La Fuerza's "need of a conveyor system that would mechanically transport empty bottles from the storage room to the bottle workers in the production room thus increasing the production and efficiency" of its business - and La Fuerza had accepted said conveyors.

On this point, the Court of Appeals had the following to say:

"Article 1571 of the Civil Code provides that an action to rescind "shall be barred after six months, from delivery of the thing sold". This article is made applicable to the case at bar by Article 1714 which provides that "the pertinent provisions on warranty of title against hidden defect in a contract of sale" shall be applicable to a contract for a piece of work. Considering that Article 1571 is a provision on sales, the delivery mentioned therein should be construed in the light of the provisions on sales. Article 1497 provides that the thing sold shall be understood as delivered when it is placed in the control and possession of the vendee. Therefore, when the thing subject of the sale is placed in the control and possession of the vendee, delivery is complete. Delivery is an act of the vendor. Thus, one of the obligations of the vendor is the delivery of the thing sold (Art. 1495). The vendee has nothing to do with the act of delivery by the vendor. On the other hand, acceptance is an obligation on the part of the vendee (art. 1582). Delivery and acceptance are two distinct and separate acts of different parties. Consequently, acceptance cannot be regarded as a condition to complete delivery.

x x x x x x x x "

We find no plausible reason to disagree with this view. Upon the completion of the installation of the conveyors, in May, 1960, particularly after the last trial run, in July, 1960, La Fuerza was in a position to decide whether or not it was satisfied with said conveyors, and, hence, to state whether the same were accepted or rejected. The failure of La Fuerza to express categorically whether they accepted or rejected the conveyors does not detract from the fact that the same were actually in its possession and control; that, accordingly, the conveyors had already been delivered by the plaintiff; and that, the period prescribed in said Art. 1571 had begun to run.

With respect to the second point raised by La Fuerza, Art. 1571 of the Civil Code provides:

"Actions arising from the provisions of the preceding ten articles shall be barred after six months, from the delivery of the thing sold.

x x x x x x x x "

Among the "ten articles" referred to in this provision, are Articles 1566 and 1567, reading:

"Art. 1566. The vendor is responsible to the vendee for any hidden faults or defects in the thing sold, even though he was not aware thereof.

"This provision shall not apply if the contrary has been stipulated, and the vendor was not aware of the hidden faults or defects in the thing sold.

"Art. 1567. In the cases of articles 1561, 1562, 1564, 1565 and 1566, the vendee may elect between withdrawing from the contract and demanding a proportionate reduction of the price, with damages in either

case.

X X X X X X X X "

Pursuant to these two (2) articles, if the thing sold has hid-den faults or defects - as the conveyors are claimed to have - the vendor - in the case at bar, the plaintiff - shall be responsible therefor and the vendee - or La Fuerza, in the present case - "may elect between withdrawing from the contract and demanding a pro-portional reduction of the price, with damages in either case." In the exercise of this right of election, La Fuerza had chosen to with-draw from the contract, by praying for its rescission; but the action therefor - in the language of Art. 1571 - "shall be barred after six months, from the delivery of the thing sold." The period of four (4) years, provided in Art. 1389 of said Code, for "the action to claim rescission," applies to contracts, in general, and must yield, in the, instant case, to said Art. 1571, which refers to sales in particular.

Indeed, in contracts of the latter type, especially when goods merchandise, machinery or parts or equipment thereof are involved, it is obviously wise to require the parties to define their position, in relation thereto, within the shortest possible time. Public interest demands that the status of the relations between the vendor and the vendee be not left in a condition of uncertainty for an unreasonable length of time, which would be the case, if the lifetime of the vendee's right of rescission were four (4) years.

WHEREFORE, the appealed resolution of the Court of Appeals is hereby affirmed, with costs against appellant, La Fuerza, Inc.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Angeles and Fernando, JJ., concur.
Castro, J., did not take part.

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