

NATIONAL MARKETING CORPORATION, PLAINTIFF-APPELLANT, VS. ALTO TRADING DEVELOPMENT CORPORATION AND THE ALTO SURETY & INSURANCE CO., INC., DEFENDANTS-APPELLEES.*G.R. No. L-21979. September 29, 1967*

Ponente: FERNANDO, J.

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What is to be determined in this appeal is the correctness of a lower court decision absolving from liability defendants Atlas Trading Development Corporation (herein-after referred to as Atlas) and Alto Surety & Insurance Company (hereinafter referred to as Alto), the former under a contract for the sale of galvanized steel sheets and the latter under a performance bond.

While the plaintiff-appellant is the National Marketing Corporation, the action was originally started by its pre-decessor Philippine Relief and Trade Rehabilitation Administration (hereinafter referred to as the Pratra). In its complaint dated June 14, 1950, it alleged: On July 21, 1948, defendant Atlas offered to sell to the plaintiff 8,000 metric tons of galvanized sheets at the price of U.S. \$247 per ton of 1,000 kilos, CIF Manila, to be shipped beginning August, 1948;[1] on July 24, 1948, the plaintiff made an order and agreed to purchase the galvanized sheets offered by defendant Atlas with the condition that the seller should furnish a performance bond in favor of the plaintiff in the amount of P100,000.00;[2] on August 5, 1948, the plaintiff and defendant Atlas as sales brokers for West India Commercial Corp. of New York City, N. Y., U. S. A., executed a contract of purchase and sale wherein the said defendant obligated itself to sell 8,000 metric tons of galvanized steel sheets, at the price of U. S. \$247 per ton of 1,000 kilos CIF Manila;[3] under the afore-mentioned contract, defendant Atlas obligated itself to furnish in favor of Pratra a performance bond in the sum of P100,000.00 to guarantee the faithful compliance of all the terms and conditions of the said contract, with defendant Alto as surety;[4] in compliance with its undertakings in the contract, the plaintiff on August 26, 1948, opened a letter of credit with the Philippine National Bank for the amount of U. S. \$1,976,000.00 in favor of the West India Commercial Corp. of New York, United States.[5]

Neither defendant Atlas nor its supposed principal the West India Commercial Corp. of New York delivered the 8,000 metric tons of galvanized steel sheets involved in the contract.[6] The aforementioned contract having provided that in case of violation of any of its terms and conditions, the buyer will be entitled to recover liquidated damages in the amount of 20% of the total contractual value of the merchandise therein described, U. S. \$1,976,000.00, 20% of which is U.S. \$395,200.00 or P790,400.00,[7] plaintiff sought to recover the same from Atlas. It likewise prayed that defendants Alto be condemned to pay the plaintiff the amount of P100,000.00, the amount of the performance bond.

In the answer of defendant Atlas, filed on July 15, 1950, it admitted making the offer, adding however that plaintiff was duly informed that it was acting in its representative capacity;[8] that an order to purchase the galvanized steel sheets was in fact made by plaintiff;[9] that such a contract of purchase and sale as set forth in

paragraph 4 of the complaint was in fact executed, although the date of the execution was not on August 5, 1948 but on August 21, 1948, with the further allegation that its terms and conditions were "modified, altered and supplemented by another agreement dated August 20, 1948;" that while there was opened on August 26, 1948, a letter of credit for the amount of U. S. \$1,976,000.00 in favor of West India Commercial Company of New York, U. S. A. by the Philippine National Bank, acting on plaintiff's application, such letter of credit being in favor of the beneficiary, West India Commercial Company of New York, U.S.A., it could not be utilized in view of what was considered "serious discrepancies between the terms of the said letter of credit and the contract;" no delivery of the 8,000 metric tons of galvanized steel sheets, was made as there was no obligation to do so, but even if it arose, "delivery was made impossible by the prior rescission of the contracts by plaintiff." [10] It further set up five special defenses and a counterclaim for P100,000.00.

Defendant Alto denied the allegations of the complaint on the ground that it had no knowledge or information sufficient to form a belief as to what was therein contained except the execution of the bond for and on behalf of the West India Commercial Corporation of New York to guarantee the latter's performance of its obligation, if any, under the contract which, having been executed and acknowledged on August 21, 1948 and not on August 5, 1948 as alleged, could not be the basis of any obligation. On the assumption however that the latter contract could be the one referred to in the bond, it alleged that it did so for and on behalf of the West India Commercial Corporation of New York to guarantee the performance of its obligation, if any, and that it never incurred any obligation at all under the contract which was the basis of the complaint "as it was never a party to it, nor did it authorize any one to obligate it in any manner whatsoever," and that plaintiff "having discharged the West India Commercial Corporation of New York from liability on said contract, [defendant Alto] is and must likewise be discharged, the obligation of the surety being merely accessory to that of the principal."

After trial, the lower court promulgated a decision on July 29, 1962 dismissing the complaint. In absolving defendant Atlas, it held that it "was duly authorized to act as agent or broker of the West India Commercial Company in entering into the contract of purchase and sale." [11] Even if its liability could be held to be direct, the Pratra, having demanded payment of damages from West India Commercial Corporation and not from it, waived whatever claim it might have against Atlas. The above circumstances taken in connection with what the lower court found to be a discrepancy in the letter of credit in favor of the West India Commercial Corporation, which it held to be a condition precedent for the obligation of the latter under such contract to arise, such discrepancy consisting of no period of grace of 60 days for delivery having been provided for, although subsequently corrected but only after the first delivery was "already impossible physically for the West India Commercial Company to make on time" led it to conclude that for all legal intents and purposes, such contract of purchase and sale "had not been operative up to the time it was rescinded by the Pratra on September 23, 1948, due to the failure of the latter to perform the condition precedent of establishing a sufficient letter of credit." [12] No liability could therefore attach to defendant Atlas.

The same conclusion was reached as far as defendant Alto was concerned. Thus: "As to the defendant Alto Surety, we hold that judgment cannot be rendered against it. Alto Surety posted its bond for the West India Commercial Corporation and not for the defendant Atlas. And as the West India Commercial Corporation is not a party in this suit, there is nothing for the Alto Surety to answer. The case against the Alto Surety and Insurance Co., Inc., is also dismissed." [13]

The facts as found by the lower court are in accordance with the evidence. The lay as applied cannot be characterized as erroneous. The judgment must be affirmed.

It being undisputed that no such delivery of the 8,000 metric tons of galvanized steel sheets contracted for was ever made, the decisive question is whether liability could be deemed to have arisen. If the answer were in the

affirmative the next question would be, who is to be held accountable? Defendant Atlas was absolved from any responsibility by the lower court. It justified the non-delivery because of the discrepancy between what was provided for in the contract of the purchase and sale[14] and the letter of credit,[15] which under the contract had to be opened. As noted in the Brief submitted by Atty. Domingo Zavalla for defendant Atlas, distinguished for its clarity and lucidity, the failure of the letter of credit to comply with what was agreed upon is very apparent and noticeable." Under the contract, the shipment of the galvanized steel sheets could be made during a period from August, 1948 to February, 1949 with a grace of 60 days, i.e., "all shipments within 60 days of the above schedule would be accepted as good delivery." [16] The letter of credit on the other hand did not provide for such a period of grace of 60 days for late shipment. The corrected letter of credit was received by them West India Corporation only on September 7, 1948. As the first shipment was supposed to have been made in August, it was impossible for the West India Commercial Corporation to make it on time. Under the above circumstances the correctness of the assertion in a radiogram of West India Commercial Corporation sent to defendant Atlas stating that serious discrepancy "from contract" would prevent it from "using letter of credit in present form" cannot be denied.

In a decision of this Court,[17] it was held that the failure to open a letter of credit within a period agreed upon suffices to prevent a binding juridical the from being created. That case, dealing with offer and acceptance, reiterated the principle that to bind the offeror, "the offeree must comply with the conditions of the offer." The situation before us deals with a perfected contract. Here the time element does not enter into the failure of one party to live up to the terms of the contract. What was manifest was the discrepancy between what was agreed upon in the contract and the letter of credit, the effectivity of which requires that "all conditions contained [in it] be strictly complied with, however onerous they may be." [18] The above principle is deemed "absolutely necessary for the protection of the banking and mercantile community." There is a New York Supreme Court decision to the effect that a "material variance between the letter of credit and the sales agreement would excuse non-performance by the seller." [19]

Plaintiff-appellant must have been mindful of the force and applicability of the above controlling principle. In its Brief, It sought to avoid its application by alleging that by its very nature "a letter of credit cannot contain all the particulars nor can it embody all the agreements previously entered into by the parties for the terms and conditions of their agreement are already contained in separate documents." [20] Plaintiff-appellant would then allege that no such period of allowance or grace for the late shipment was provided for because the same was already embodied in the contract of purchase and sale, Exhibit C. [21] Such an argument is far from persuasive. An authoritative excerpt from Zollman on Banks and Banking argues to the contrary. Thus: "Where, therefore, legal relations arise from a letter of credit, such letter contains the entire contract of the parties, and their resulting obligations should be measured by its provisions. It constitutes the complete agreement, and is independent of the contract sale between the buyer and the seller, and is unaffected by any breach of contract on the part of the seller or the buyer or by any controversy which may arise between the buyer and seller or by any other transaction between the buyer and seller." [22]

It follows then that the lower court was correct in holding that no liability was incurred under the contract of purchase and sale because of such failure to make the delivery. Such being the case, the question of whether or not defendant Atlas, which acted as a sales broker, could be held liable for the alleged breach need not be passed upon.

As for the surety, defendant Alto, the judgment must likewise be affirmed for the obvious reason that as no accountability of the principal arose from the failure to make the delivery of the galvanized steel sheets, it was equally exempt from liability.

WHEREFORE, the judgment appealed from is affirmed. With-out pronouncement as to costs.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.
Benzon J., is on leave.

[1] Par. 2, Complaint, Annex A.

[2] Par. 3, Complaint, Annex B.

[3] Par. 4, Complaint, Annex C.

[4] Par. 5, Complaint, Annex D.

[5] Par. 6, Complaint.

[6] Par. 7, Complaint.

[7] Pars. 8 & 9, Complaint.

[8] Par. 2, Answer.

[9] Par. 3, Answer.

[10] Pars. 4, 6 & 7, Answer and Annex 1-Atlas.

[11] Decision, Record on Appeal, p. 88.

[12] Decision, Record on Appeal, p. 95.

[13] Decision, Record on Appeal, p. 98.

[14] Exhibit C.

[15] Exhibit E-2.

[16] Exhibit C, par. I, D.

[17] *Sycip v. National Coconut Corp. and Board of Liquidators*, G.R. No. L-6618, April 28, 1956.

[18] According to Zollman: "Such a letter may be made conditional. It is absolutely necessary for the protection of the banking and mercantile community that all conditions contained in the letter be strictly complied with, however onerous they may be. The seller should strictly observe the terms and conditions under which the credit is to become available, and, unless he does this, he will, have no cause of action against the bank for refusing to honor his draft." 8 Zollman, *Banks and Banking*, 11-12.

[19] *Bennett v. Kazvini et al.*, 119 New York Supp. 2d 530, 533-534. The opinion cited the following cases: *Isaiou Trading Corp. v. Standard Rice Co.*, 208 App. Div. 20, 202 N.Y.S. 849; *Catz American Co. v. March*, 272 App. Div. 134, 69 N. Y. S. 2d 805; see also *Ernesto Foglino & Co. v. Webster*, 217 App. Div. 282, 294-295, 216 N. Y. S. 225, 234-235.

[20] Appellant's Brief, p. 30.

[21] *Ibid.*

[22] *Op. Cit.*, pp. 24-25.

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