

NATIONAL POWER CORPORATION, PLAINTIFF-APPELLANT, VS. EIN CHEMICAL CORPORATION AND PHILIPPINE INTERNATIONAL SURETY CO., DEFENDANTS-APPELLEES.

G.R. No. L-24856. November 14, 1986

Ponente: PARAS, J.

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PARAS, J.:

On March 23, 1956, the National Power Corporation (or NPC), after public bidding, awarded to the EIN Chemical Corporation (or EIN), the contract formalized on April 19, 1956, to supply and deliver 3,691 long tons of crude sulfur in one shipment to the Maria Cristina Fertilizer Plant in Iligan City on or before May 10, 1956, for the price of P374,374.91 to be paid by NPC. To guarantee its obligation, EIN posted a bond from the Philippine International Surety Co. in the amount of P74,874.98.

EIN obtained from the NPC a letter of credit with Philippine National Bank (PNB), New York on May 8, 1956 amounting to US\$185,794.00 with an expiry date originally set for May 30, 1956 but reset by NPC upon the request of EIN to June 30, 1956. Anticipating failure to deliver on the contract date, EIN requested and was granted by NPC a further extension of the expiry date of the letter of credit to September 30, 1956. On August 19, 1956, EIN delivered only 1,000 long tons of crude sulfur ostensibly due to lack of bottoms; but was paid therefor by NPC the amount of P101,764.05. Even though it failed to deliver as per contract, EIN requested to be allowed to participate in another bidding to be conducted by NPC but the latter disqualified EIN from participating in the said bidding. The NPC instead sued EIN for damages for breach of contract on December 17, 1956 before the then Court of First Instance of Manila, Branch XVI. The lower court dismissed the case declaring that EIN was not in bad faith; that, the extension of the expiry date of the letter of credit carried with it the extension of the delivery time; that before it became the duty of EIN to deliver, the NPC should first open the letter of credit notwithstanding the fixed delivery date; that NPC was un-justified in disqualifying EIN from bidding for the next contract; and, that there was scarcity of bottoms when the expiry date of the letter of credit was extended.

The NPC appealed the trial court's decision questioning all the foregoing points. On the other hand, EIN alleged that NPC failed to inform it that it would take 45 days to ship from the U.S. Atlantic ports to the Philippines; that NPC incurred delay in opening the letter of credit; that, the purpose of extending the expiry date of the letter of credit was to extend the delivery time and this became manifest with the partial delivery of 1,000 long tons of crude sulfur; that, it was the intention of the parties for the seller to ship the crude sulfur as soon as it received notice of the opening of the letter of credit; that it should have been allowed to participate in the second bidding; and, that the scarcity of bottoms could have been avoided had NPC opened the letter of credit within a reasonable time.

The sole question for Our resolution is whether or not EIN committed a breach of contract which would entitle NPC to damages. A review of the records shows that the contract was freely entered into by both parties in a good faith. The provisions of the contract, however, indicate that there is no relationship between the delivery date and

the opening of the letter of credit which was anyway opened within a reasonable time after the signing of the contract. The extensions of the expiry dates of the letter of credit cannot, by any means, be interpreted as extensions of the delivery date. If this was the intention of the parties, then a corresponding date or deadline could have been provided. As the terms show, no other delivery date can even be inferred. The claim that the intention of the parties for the EIN to ship the goods upon notice of the opening of the letter of credit is without merit. The imputation of malicious delay on the part of NPC is groundless, there being no proof to that effect. On the contrary, NPC has been very lenient by extending the expiry date of the letter of credit thrice despite the failure of EIN to fully deliver on the contract. The problem of bottoms is one that is well-known and anticipated by suppliers and shippers, and NPC cannot be faulted for such problem since it opened the letter of credit within a reasonable time after the signing of the contract. The NPC, in fact, had no duty to inform EIN of the shipping time between the US Atlantic ports and the Philippines since all shippers and suppliers are presumed to know this as part of their business.

Evidently, the EIN clearly committed a breach of contract by failing to completely deliver on its contract inspite of the leniency of the NPC in enforcing its rights. Laxity of a contracting party in the enforcement of its rights under the contract does not in any manner diminish its rights thereunder.

Considering the foregoing, the Court resolved to SET ASIDE the appealed decision, and to render a new one directing the appellees to pay appellant, jointly and severally, the amount of the performance bond, the liqui-dated damages from August 19, 1956 up to January 20, 1958 when the appellant purchased crude sulfur from other sources, and the costs.

Feria, (Chairman), Fernan, Alampay, and Gutierrez, Jr., concur.

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