

**SAURA IMPORT & EXPORT CO., INC., PLAINTIFF-APPELLEE, VS.
DEVELOPMENT BANK OF THE PHILIPPINES,
DEFENDANT-APPELLANT.***G.R. No. L-24968. April 27, 1972*

Ponente: MAKALINTAL, J.

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In Civil Case No. 55908 of the Court of First Instance of Manila, judgment was rendered on June 28, 1965 sentencing defendant Development Bank of the Philippines (DBP) to pay actual and consequential damages to plaintiff Saura Import and Export Co., Inc. in the amount of P383,343.68, plus interest at the legal rate from the date the complaint was filed and attorney's fees in the amount of P5,000.00. The present appeal is from that judgment.

In July 1953 the plaintiff (hereinafter referred to as Saura, Inc.) applied to the Rehabilitation Finance Corporation (RFC), before its conversion into DBP, for an industrial loan of P500,000.00, to be used as follows: P250,000.00 for the construction of a factory building (for the manufacture of jute sacks); P240,900.00 to pay the balance of the purchase price of the jute mill machinery and equipment; and P9,100.00 as additional working capital.

Parenthetically, it may be mentioned that the jute mill machinery had already been purchased by Saura on the strength of a letter of credit extended by the Prudential Bank and Trust Co., and arrived in Davao City in July 1953; and that to secure its release without first paying the draft, Saura, Inc. executed a trust receipt in favor of the said bank.

On January 7, 1954 RFC passed Resolution No. 145 approving the loan application for P500,000.00, to be secured by a first mortgage on the factory buildings to be constructed, the land site thereof, and the machinery and equipment to be installed. Among the other terms spelled out in the resolution were the following:

"1. That the proceeds of the loan shall be utilized exclusively for the following purposes:

For construction of factory building P250,000.00

For payment of the balance of purchase price of machinery & equipment
.240,900.00

For working capital 9,100.00

TOTAL P500,000.00

4. That Mr. & Mrs. Ramon E. Saura, Inocencia Arellano, Aniceto Caolboy and Gregoria Estabillo and China Engineers, Ltd. shall sign the promissory notes jointly with the borrower-corporation;

5. That releases shall be made at the discretion of the Rehabilitation Finance Corporation, subject to availability of funds, and as the construction of the factory buildings progresses, to be certified to by an appraiser of this

Corporation."

Saura, Inc. was officially notified of the resolution on January 9, 1954. The day before, however, evidently having otherwise been informed of its approval, Saura, Inc. wrote a letter to RFC, requesting a modification of the terms laid down by it, namely: that in lieu of having China Engineers, Ltd. (which was willing to assume liability only to the extent of its stock subscription with Saura, Inc.) sign as co-maker on the corresponding promissory notes, Saura, Inc. would put up a bond for P123,500.00, an amount equivalent to such subscription; and that Maria S. Roca would be substituted for Inocencia Arellano as one of the other co-makers, having acquired the latter's shares in Saura, Inc.

In view of such request RFC approved Resolution No. 736 on February 4, 1954, designating one of the members of its Board of Governors, for certain reasons stated in the resolution, "to reexamine all the aspects of this approved loan * * * with special reference as to the advisability of financing this particular project based on present conditions obtaining in the operations of jute mills, and to submit his findings thereon at the next meeting of the Board."

On March 24, 1954 Saura, Inc. wrote RFC that China Engineers, Ltd. had again agreed to act as co-signer for the loan, and asked that the necessary documents be prepared in accordance with the terms and conditions specified in Resolution No. 145. In connection with the re-examination of the project to be financed with the loan applied for, as stated in Resolution No. 736, the parties named their respective committees of engineers and technical men to meet with each other and undertake the necessary studies, although in appointing its own committee Saura, Inc. made the observation that the same "should not be taken as an acquiescence on (its) part to novate, or accept new conditions to, the agreement already entered into," referring to its acceptance of the terms and conditions mentioned in Resolution No. 145.

On April 13, 1954 the loan documents were executed: the promissory note, with F. R. Hailing, representing China Engineers, Ltd., as one of the co-signers; and the corresponding deed of mortgage, which was duly registered on the following April 17.

It appears, however, that despite the formal execution of the loan agreement the re-examination contemplated in Resolution No. 736 proceeded. In a meeting of the RFC Board of Governors on June 10, 1954, at which Ramon Sawa, President of Saura, Inc., was present, it was decided to reduce the loan from P500,000.00 to P300,000.00. Resolution No. 3989 was approved as follows:

"RESOLUTION No. 3989. Reducing the Loan Granted Saura Import & Export Co., Inc. under Resolution No. 145, C.S., from P500,000.00 to P300,000.00. Pursuant to Bd. Res. No. 736, c.s., authorizing the re-examination of all the various aspects of the loan granted the Saura Import & Export Co. under Resolution No. 145, c.s., for the purpose of financing the manufacture of jute sacks in Davao, with special reference as to the advisability of financing this particular project based on present conditions obtaining in the operation of jute mills, and after having heard Ramon E. Saura and after extensive discussion on the subject the Board, upon recommendation of the Chairman, RESOLVED that the loan granted the Saura Import & Export Co. be REDUCED from P500,000.00 to P300,000.00 and that releases up to P100,000 may be authorized as may be necessary from time to time to place the factory in actual operation; PROVIDED that all terms and conditions of Resolution No. 145, c.s., not inconsistent herewith, shall remain in full force and effect."

On June 19, 1954 another hitch developed, F.R. Halling, who had signed the promissory note for China Engineers, Ltd. jointly and severally with the other co-signers, wrote RFC that his company no longer wished to avail of the loan and therefore considered the same cancelled as far as it was concerned. A follow-up letter dated July 2, requested RFC that the registration of the mortgage be withdrawn.

In the meantime Saura, Inc. had written RFC requesting that the loan of P500,000.00 be granted. The request was denied by RFC, which added in its letter-reply that it was "constrained to consider as cancelled the loan of P300,000.00 * * * In view of a notification * * * from the China Engineers, Ltd., expressing their desire to consider the loan cancelled insofar as they are concerned."

On July 24, 1954 Saura, Inc. took exception to the cancellation of the loan and informed RFC that China Engineers, Ltd. "will at anytime reinstate their signature as co-signer of the note if RFC releases to us the P500,000.00 originally approved by you."

On December 17, 1954 RFC passed Resolution No. 9083, restoring the loan to the original amount of P500,000.00, "it appearing that China Engineers, Ltd. is now willing to sign the promissory notes jointly with the borrower-corporation," but with the following proviso:

"That in view of observations made of the shortage and high cost of imported raw materials, the Department of Agriculture and Natural Resources shall certify to the following:

1. That the raw materials needed by the borrower-corporation to carry out its operation are available in the immediate vicinity; and
2. That there is prospect of increased production thereof to provide adequately for the requirements of the factory."

The action thus taken was communicated to Saura, Inc. in a letter of RFC dated December 22, 1954, wherein it was explained that the certification by the Department of Agriculture and Natural Resources was required "as the intention of the original approval (of the loan) is to develop the manufacture of sacks on the basis of locally available raw materials." This point is important, and sheds light on the subsequent actuations of the parties. Saura, Inc. does not deny that the factory he was building in Davao was for the manufacture of bags from local raw materials. The cover page of its brochure (Exh. M) describes the project as a "Joint venture by and between the Mindanao Industry Corporation and the Saura Import and Export Co., Inc. to finance, manage and operate a Kenaf mill plant, to manufacture copra and corn bags, runners, floor mattings, carpets, draperies; out of 100% local raw materials, principal Kenaf." The explanatory note on page 1 of the same brochure states that the venture "is the first serious attempt in this country to use 100% locally grown raw materials notably Kenaf which is presently grown commercially in the Island of Mindanao where the proposed jute mill is located * * *."

This fact, according to defendant DBP, is what moved RFC to approve the loan application in the first place, and to require, in its Resolution No. 9083, a certification from the Department of Agriculture and Natural Resources as to the availability of local raw materials to provide adequately for the requirements of the factory. Saura, Inc. itself confirmed the defendant's stand impliedly in its letter of January 21, 1955: (1) stating that according to a special study made by the Bureau of Forestry "Kenaf will not be available in sufficient quantity this year or probably even next year;" (2) requesting "assurances (from RFC) that my company and associates will be able to bring in sufficient jute materials as may be necessary for the full operation of the jute mill;" and (3) asking that releases of the loan be made as follows:

- a) For the payment of the receipt for jute mill machineries with the Prudential Bank & Trust Company..... P250,000.00 (For immediate release)
 - b) For the purchase of materials and equipment per attached list to enable the jute mill to operate 182,413.91
 - c) For raw materials and labor..... 67,586.09
- 1) P25,000.00 to be released on the opening of the letter of credit for raw jute for \$25,000.00.

- 2) P25,000.00 to be released upon arrival of raw jute.
- 3) P17,586.09 to be released as soon as the mill is ready to operate.

On January 25, 1955 RFC sent to Saura, Inc. the following reply:

"Dear Sirs:

This is with reference to your letter of January 21, 1965, regarding the release of your loan under consideration of P500,000. As stated in our letter of December 22, 1954, the releases of the loan, if revived, are proposed to be made from time to time, subject to availability of funds, towards the end that the sack factory shall be placed in actual operating status. We shall be able to act on your request for revised purposes and manner of releases upon re-appraisal of the securities offered for the loan.

With respect to our requirement that the Department of Agriculture and Natural Resources certify that the raw materials needed are available in the immediate vicinity and that there is prospect of increased production thereof to provide adequately the requirements of the factory, we wish to reiterate that the basis of the original approval is to develop the manufacture of sacks on the basis of the locally available raw materials. Your statement that you will have to rely on the importation of jute and your request that we give you assurance that your company will be able to bring in sufficient jute materials as may be necessary for the operation of your factory, would not be in line with our principle in approving the loan."

With the foregoing letter the negotiations came to a standstill. Saura, Inc. did not pursue the matter further. Instead, it requested RFC to cancel the mortgage, and so, on June 17, 1955 RFC executed the corresponding deed of cancellation and delivered it to Ramon F. Saura himself as president of Saura, Inc.

It appears that the cancellation was requested to make way for the registration of a mortgage contract, executed on August 6, 1954, over the same property in favor of the Prudential Bank and Trust Co., under which contract Saura, Inc. had up to December 31 of the same year within which to pay its obligation on the trust receipt heretofore mentioned. It appears further that for failure to pay the said obligation the Prudential Bank and Trust Co. sued Saura, Inc. on May 15, 1955.

On January 9, 1964, almost 9 years after the mortgage in favor of RFC was cancelled at the request of Saura, Inc., the latter commenced the present suit for damages, alleging failure of RFC (as predecessor of the defendant DBP) to comply with its obligation to release the proceeds of the loan applied for and approved, thereby preventing the plaintiff from completing or paying contractual commitments it had entered into in connection with its jute mill project.

The trial court rendered judgment for the plaintiff, ruling that there was a perfected contract between the parties and that the defendant was guilty of breach thereof. The defendant pleaded below, and reiterates in this appeal: (1) that the plaintiff's cause of action had prescribed, or that its claim had been waived or abandoned; (2) that there was no perfected contract; and (3) that assuming there was, the plaintiff itself did not comply with the terms thereof.

We hold that there was indeed a perfected consensual contract, as recognized in Article 1934 of the Civil Code, which provides:

"ART. 1954. An accepted promise to deliver something by way of commodatum or simple loan is binding upon the parties, but the commodatum or simple loan itself shall not be perfected until the delivery of the object of the contract."

There was undoubtedly offer and acceptance in this case: the application of Saura, Inc. for a loan of P500,000.00 was approved by resolution of the defendant, and the corresponding mortgage was executed and registered. But this fact alone falls short of resolving the basic claim that the defendant failed to fulfill its obligation and that the

plaintiff is therefore entitled to recover damages.

It should be noted that RFC entertained the loan application of Saura, Inc. on the assumption that the factory to be constructed would utilize locally grown raw materials, principally kenaf. There is no serious dispute about this. It was in line with such assumption that when RFC, by Resolution No. 9083 approved on December 17, 1954, restored the loan to the original amount of P500,000.00, it imposed two conditions, to wit: "(1) that the raw materials needed by the borrower-corporation to carry out its operation are available in the immediate vicinity; and (2) that there is prospect of increased production thereof to provide adequately for the requirements of the factory." The imposition of those conditions was by no means a deviation from the terms of the agreement, but rather a step in its implementation. There was nothing in said conditions that contradicted the terms laid down in RFC Resolution No. 145, passed on January 7, 1954, namely - "that the proceeds of the loan shall be utilized exclusively for the following purposes: for construction of factory building - P250,000.00; for payment of the balance of purchase price of machinery and equipment - P240,900.00; for working capital - P9,100.00." Evidently Saura, Inc. realized that it could not meet the conditions required by RFC, and so wrote its letter of January 21, 1955, stating that local jute "will not be available in sufficient quantity this year or probably next year," and asking that out of the loan agreed upon the sum of P67,586.09 be released "for raw materials and labor." This was a deviation from the terms laid down in Resolution No. 145 and embodied in the mortgage contract, implying as it did a diversion of part of the proceeds of the loan to purposes other than those agreed upon.

When RFC turned down the request in its letter of January 25, 1955 the negotiations which had been going on for the implementation of the agreement reached an impasse. Saura, Inc. obviously was in no position to comply with RFC's conditions. So instead of doing so and insisting that the loan be released as agreed upon, Saura, Inc. asked that the mortgage be cancelled, which was done on June 15, 1955. The action thus taken by both parties was in the nature of mutual desistance - what Manresa terms "mutuo disenso"[1] - which is a mode of extinguishing obligations. It is a concept that derives from the principle that since mutual agreement can create a contract, mutual disagreement by the parties can cause its extinguishment.[2]

The subsequent conduct of Saura, Inc. confirms this desistance. It did not protest against any alleged breach of contract by RFC, or even point out that the latter's stand was legally unjustified. Its request for cancellation of the mortgage carried no reservation of whatever rights it believed it might have against RFC for the latter's non-compliance. In 1962 it even applied with DBP for another loan to finance a rice and corn project, which application was disapproved. It was only in 1964, nine years after the loan agreement had been cancelled at its own request, that Saura, Inc. brought this action for damages. All these circumstances demonstrate beyond doubt that the said agreement had been extinguished by mutual desistance - and that on the initiative of the plaintiff-appellee itself.

With this view we take of the case, we find it unnecessary to consider and resolve the other issues raised in the respective briefs of the parties.

WHEREFORE, the judgment appealed from is reversed and the complaint dismissed, with costs against the plaintiff-appellee.

Reyes, J.B.L., Acting C.J., Zaldivar, Castro, Fernando, Teehankee, Barredo, and Antonio, JJ., concur.

Makasiar, J., took no part.

[1] 8 Manresa, p. 294.

[2] 2 Castan, p. 560.

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