

**NATIONAL POWER CORPORATION, PLAINTIFF-APPELLANT, VS.
NATIONAL MERCHANDISING CORPORATION AND DOMESTIC
INSURANCE COMPANY OF THE PHILIPPINES,
DEFENDANTS-APPELLANTS.**

G.R. Nos. L-33819 and L-33897. October 23, 1982

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the recovery of liquidated damages from a seller's agent that allegedly exceeded its authority in negotiating the sale.

Plaintiff National Power Corporation appealed on questions of law from the decision of the Court of First Instance of Manila dated October 10, 1966, ordering defendants National Merchandising Corporation and Domestic Insurance Company of the Philippines to pay solidarily to the National Power Corporation reduced liquidated damages in the sum of P72,114.56 plus legal rate of interest from the filing of the complaint and the costs (Civil Case No. 33114).

The two defendants appealed from the same decision allegedly because it is contrary to law and the evidence. As the amount originally involved is P360,572.80 and defendants' appeal is tied up with plaintiff's appeal on questions of law, defendants' appeal can be entertained under Republic Act No. 2613 which amended section 17 of the Judiciary Law.

On October 17, 1956, the National Power Corporation and National Merchandising Corporation (Namerco) of 3111 Nagtahan Street, Manila, as the representative of the International Commodities Corporation of 11 Mercer Street, New York City (Exh. C), executed in Manila a contract for the purchase by the NPC from the New York firm of four thousand long tons of crude sulfur for its Maria Cristina Fertilizer Plant in Iligan City at a total price of P450,716 (Exh. E).

On that same date, a performance bond in the sum of P90,143.20 was executed by the Domestic Insurance Company in favor of the NPC to guarantee the seller's obligations (Exh. F).

It was stipulated in the contract of sale that the seller would deliver the sulfur at Iligan City within sixty days from notice of the establishment in its favor of a letter of credit for \$212,120 and that failure to effect delivery would subject the seller and its surety to the payment of liquidated damages at the rate of two-fifth of one percent of the full contract price for the first thirty days of default and four-fifth of one percent for every day thereafter until complete delivery is made (Art. 8, p. 111, Defendants' Record on Appeal).

In a letter dated November 12, 1956, the NPC advised John Z. Sycip, the president of Namerco, of the opening on November 8 of a letter of credit for \$212,120 in favor of International Commodities Corporation which would expire on January 31, 1957 (Exh. I). Notice of that letter of credit was received by cable by the New York firm on November 15, 1956 (Exh. 80-Wallick). Thus, the deadline for the delivery of the sulfur was January 15, 1957.

The New York supplier was not able to deliver the sulfur due to its inability to secure shipping space. During the period from January 20 to 26, 1957 there was a shut-down of the NPC's fertilizer plant because there was no sulfur. No fertilizer was produced (Exh. K).

In a letter dated February 27, 1957, the general manager of the NPC advised Namerco and the Domestic Insurance Company that under Article 9 of the contract of sale "nonavailability of bottom or vessel" was not a fortuitous event that would excuse nonperformance and that the NPC would resort to legal remedies to enforce its rights (Exh. L and M).

The Government Corporate Counsel in his letter to Sycip dated May 8, 1957 rescinded the contract of sale due to the New York supplier's nonperformance of its obligations (Exh. G). The same counsel in his letter of June 8, 1957 demanded from Namerco the payment of P360,572.80 as liquidated damages. He explained that time was of the essence of the contract. A similar demand was made upon the surety (Exh. H and H-1).

The liquidated damages were computed on the basis of the 115-day period between January 15, 1957, the deadline for the delivery of the sulfur at Iligan City, and May 9, 1957 when Namerco was notified of the rescission of the contract, or P54,085.92 for the first thirty days and P306,486.88 for the remaining eighty-five days. Total: P360,572.80.

On November 5, 1957, the NPC sued the New York firm, Namerco and the Domestic Insurance Company for the recovery of the stipulated liquidated damages (Civil Case No. 33114).

The trial court in its order of January 17, 1958 dismissed the case as to the New York firm for lack of jurisdiction because it was not doing business in the Philippines (p. 60, Defendants' Record on Appeal).

On the other hand, Melvin Wallick, as the assignee of the New York corporation and after the latter was dropped as a defendant in Civil Case No. 33114, sued Namerco for damages in connection with the same sulfur transaction (Civil Case No. 37019). The two cases, both filed in the Court of First Instance of Manila, were con-solidated. A joint trial was held. The lower court rendered separate decisions in the two cases on the same date.

In Civil Case No. 37019, the trial court dismissed Wallick's action for damages against Namerco because the assignment in favor of Wallick was champertous in character. Wallick appealed to this Court. The appeal was dismissed because the record on appeal did not disclose that the appeal was perfected on time (Res. of July 11, 1972 in L-33893).

In this Civil Case No. 33114, although the records on appeal were approved in 1967, inexplicably, they were elevated to this Court in 1971. That anomaly initially contributed to the delay in the adjudication of this case.

Defendants' appeal, L-33819. - They contend that the delivery of the sulfur was conditioned on the availability of a vessel to carry the shipment and that Namerco acted within the scope of its authority as agent in signing the contract of sale.

The documentary evidence belies these contentions. The invitation to bid issued by the NPC provides that non-availability of a steamer to transport the sulfur is not a ground for nonpayment of the liquidated damages in case of nonperformance by the seller:

"4. Responsibility for availability of vessel. - The availability of vessel to transport the quantity of sulfur within the time specified in item 14 of this specification shall be the responsibility of the bidder. In case of award of contract, failure to ship on time allegedly due to non-availability of vessels shall not exempt the Contractor from payment of liquidated damages provided in item 15 of this specification."

"15. Liquidated damages. - x x x x x x x x x x"

"Availability of vessel being a responsibility of the Contractor as specified in item 4 of this specification, the terms 'unforeseeable causes beyond the control and without the fault or negligence of the Contractor' and 'force majeure' as used herein shall not be deemed to embrace or include lack or non-availability of bottom or vessel. It is agreed that prior to making his bid, a bidder shall have made previous arrangements regarding shipments within the required time. It is clearly understood that in no event shall the Contractor be exempt from the payment of liquidated damages herein specified for reason of lack of bottom or vessel. Lack of bottom or non-availability of vessel shall, in no case, be considered as a ground for extension of time. x x x." (Exh. A, pp. 13, 18-19, Defendants' Record on Appeal).

Namerco's bid or offer is even more explicit. It provides that it was "responsible for the availability of bottom or vessel" and that it "guarantees the availability of bottom or vessel to ship the quantity of sulfur within the time specified in this bid" (Exh. B, p. 22, Defendants' Record on Appeal).

In the contract of sale itself item 15 of the invitation to bid is reproduced in Article 9 which provides that "it is clearly understood that in no event shall the seller be entitled to an extension of time or be exempt from the payment of liquidated damages herein specified for reason of lack of bottom or vessel" (Exh. E, p. 36, Record on Appeal).

It is true that the New York corporation in its cable to Namerco dated August 9, 1956 stated that the sale was subject to availability of a steamer (Exh. N). However, Namerco did not disclose that cable to the NPC and, contrary to its principal's instruction, it agreed that non-availability of a steamer was not a justification for nonpayment of the liquidated damages.

The trial court rightly concluded that Namerco acted beyond the bounds of its authority because it violated its principal's cabled instructions (1) that the delivery of the sulfur should be "C & F Manila", not "C & F Iligan City"; (2) that the sale be subject to the availability of a steamer and (3) that the seller should be allowed to withdraw right away the full amount of the letter of credit and not merely eighty percent thereof (pp. 123-124, Record on Appeal).

The defendants argue that it was incumbent upon the NPC to inquire into the extent of the agent's authority and, for its failure to do so, it could not claim any liquidated damages which, according to the defendants, were provided for merely to make the seller more diligent in looking for a steamer to transport the sulfur.

The NPC counter-argues that Namerco should have advised the NPC of the limitations on its authority to negotiate the sale.

We agree with the trial court that Namerco is liable for damages because under article 1897 of the Civil Code the agent who exceeds the limits of his authority without giving the party with whom he contracts sufficient notice of his powers is personally liable to such party.

The truth is that even before the contract of sale was signed Namerco was already aware that its principal was having difficulties in booking shipping space. In a cable dated October 16, 1956, or one day before the contract of sale was signed, the New York supplier advised Namerco that the latter should not sign the contract unless it (Namerco) wished to assume sole responsibility for the shipment (Exh. T).

Sycip, Namerco's president, replied in his letter to the seller dated also October 16, 1956, that he had no choice but to finalize the contract of sale because the NPC would forfeit Namerco's bidder's bond in the sum of P45,100 posted by the Domestic Insurance Company if the contract was not formalized (Exh. 14, 14-A and Exh. V).

Three days later, or on October 19, the New York firm cabled Namerco that the firm did not consider itself bound by the contract of sale and that Namerco signed the contract on its own responsibility (Exh. W).

In its letters dated November 8 and 19, 1956, the New York corporation informed Namerco that since the latter acted contrary to the former's cabled instructions, the former disclaimed responsibility for the contract and that the responsibility for the sale rested on Namerco (Exh. Y and Y-1).

The letters of the New York firm dated November 26 and December 11, 1956 were even more revealing. It bluntly told Namerco that the latter was never authorized to enter into the contract and that it acted contrary to the re-peated instructions of the former (Exh. U and Z). Said the vice-president of the New York firm to Namerco:

"As we have pointed out to you before, you have acted strictly contrary to our repeated instructions and, however regrettably, you have no one but yourselves to blame."

The rule relied upon by the defendants-appellants that every person dealing with an agent is put upon inquiry and must discover upon his peril the authority of the agent would apply in this case if the principal is sought to be held liable on the contract entered into by the agent.

That is not so in this case. Here, it is the agent that is sought to be held liable on a contract of sale which was expressly repudiated by the principal because the agent took chances, it exceeded its authority and, in effect, it acted in its own name.

As observed by Castan Tobeñas, an agent "que haya traspasado los limites del mandato, lo que equivale a obrar sin mandato" (4 Derecho Civil Español, 8th Ed., 1956, p. 520).

As opined by Olivieri, "si el mandante contesta o impugna el negocio juridico concluido por el mandatario con el tercero, aduciendo el exceso de los limites im-puestos, es justo que el mandatario, que ha tratado con engaño al tercero, sea responsable personalmente respecto de él de las consecuencias de tal falta de aceptación por parte del mandante. Tal responsabilidad del mandatario se informa en el principio de la falta de garantia de la existencia del mandato y de la cualidad de mandatario, garantia impuesta coactivamente por la ley, que quiere que aquel que contrata como mandatario esté obligado a garantizar al tercero la efectiva existencia de los poderes que afirma se halla investido, siempre que el tercero mismo sea de buena fe. Efecto de tal garantía es el resarcimiento de los daños causados al tercero como consecuencia de la negativa del mandante a reconocer lo actuado por el mandatario." (26, part II, Scaevola,Codigo Civil, 1951, pp. 358-9).

Manresa says that the agent who exceeds the limits of his authority is personally liable "porque realmente obra sin poderes" and the third person who contracts with the agent in such a case would be defrauded if he would not be allowed to sue the agent (11 Codigo Civil, 6th Ed., 1972, p. 725).

The defendants also contend that the trial court erred in holding as enforceable the stipulation for liquidated damages despite its finding that the contract was executed by the agent in excess of its authority and is, therefore, allegedly unenforceable.

In support of that contention, the defendants cite article 1403 of the Civil Code which provides that a contract entered into in the name of another person by one who has acted beyond his powers is unenforceable.

We hold that defendants' contention is untenable because article 1403 refers to the unenforceability of the contract against the principal. In the instant case, the contract containing the stipulation for liquidated damages is not being enforced against its principal but against the agent and its surety.

It is being enforced against the agent because article 1897 implies that the agent who acts in excess of his authority is personally liable to the party with whom he contracted.

And that rule is complemented by article 1898 of the Civil Code which provides that "if the agent contracts in the name of the principal, exceeding the scope of his authority, and the principal does not ratify the contract, it shall

be void if the party with whom the agent contracted is aware of the limits of the powers granted by the principal".

As priorly discussed, Namerco, as agent, exceeded the limits of its authority in contracting with the NPC in the name of its principal. The NPC was unaware of the limitations on the powers granted by the New York firm to Namerco.

The New York corporation in its letter of April 26, 1956 said:

"We hereby certify that National Merchandising Corporation x x x are our exclusive representatives in the Philippines for the sale of our products.

"Furthermore, we certify that they are empowered to present our offers in our behalf in accordance with our cabled or written instructions." (Exh. C).

Namerco never disclosed to the NPC the cabled or written instructions of its principal. For that reason and because Namerco exceeded the limits of its authority, it virtually acted in its own name and not as agent and it is, therefore, bound by the contract of sale which, however, is not enforceable against its principal.

If, as contemplated in articles 1897 and 1898, Namerco is bound under the contract of sale, then it follows that it is bound by the stipulation for liquidated damages in that contract.

Defendants' contention that Namerco's liability should be based on tort or quasi-delict, as held in some American cases, like *Mendelsohn vs. Holton*, 149 N.E. 38, 42 ALR 1307, is not well-taken. As correctly argued by the NPC, it would be unjust and inequitable for Namerco to escape liability after it had deceived the NPC.

Another contention of the defendants is that the Domestic Insurance Company is not liable to the NPC because its bond was posted, not for Namerco, the agent, but for the New York firm which is not liable on the contract of sale.

That contention cannot be sustained because it was Namerco that actually solicited the bond from the Domestic Insurance Company and, as explained already, Namerco is being held liable under the contract of sale because it virtually acted in its own name. It became the principal in the performance bond. In the last analysis, the Domestic Insurance Company acted as surety for Namerco.

The rule is that "want of authority of the person who executes an obligation as the agent or representative of the principal will not, as a general rule, affect the surety's liability thereon, especially in the absence of fraud, even though the obligation is not binding on the principal" (72 C.J.S. 525).

Defendants' other contentions are that they should be held liable only for nominal damages, that interest should not be collected on the amount of damages and that the damages should be computed on the basis of a forty-five-day period and not for a period of one hundred fifteen days.

With respect to the imposition of the legal rate of interest on the damages from the filing of the complaint in 1957, or a quarter of a century ago, defendants' contention is meritorious. It would be manifestly inequitable to collect interest on the damages especially considering that the disposition of this case has been considerably delayed due to no fault of the defendants.

The contention that only nominal damages should be adjudged is contrary to the intention of the parties (NPC, Namerco and its surety) because it is clearly provided that liquidated damages are recoverable for delay in the delivery of the sulfur and, with more reason, for non-delivery.

No proof of pecuniary loss is required for the recovery of liquidated damages. The stipulation for liquidated damages is intended to obviate controversy on the amount of damages. There can be no question that the NPC

suffered damages because its production of fertilizer was disrupted or diminished by reason of the non-delivery of the sulfur.

The parties foresaw that it might be difficult to ascertain the exact amount of damages for non-delivery of the sulfur. So, they fixed the liquidated damages to be paid as indemnity to the NPC.

On the other hand, nominal damages are damages in name only or are in fact the same as no damages (25 C.J.S. 466). It would not be correct to hold in this case that the NPC suffered damages in name only or that the breach of contract was merely technical in character.

As to the contention that the damages should be computed on the basis of forty-five days, the period required by a vessel leaving Galveston, Texas to reach Iligan City, that point need not be resolved in view of our conclusion that the liquidated damages should be equivalent to the amount of the bidder's bond posted by Namerco.

NPC's appeal, L-33897. - The trial court reduced the liquidated damages to twenty percent of the stipulated amount. The NPC contends that it is entitled to the full amount of liquidated damages in the sum of P360,572.80.

In reducing the liquidated damages, the trial court relied on article 2227 of the Civil Code which provides that "liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable".

Apparently, the trial court regarded as an equitable consideration the persistent efforts of Namerco and its principal to charter a steamer and that the failure of the New York firm to secure shipping space was not attributable to its fault or negligence.

The trial court also took into account the fact that the selling price of the sulfur was P450,716 and that to award as liquidated damages more than eighty percent of the price would not be altogether reasonable.

The NPC contends that Namerco was an obligor in bad faith and, therefore, it should be responsible for all damages which could be reasonably attributed to its nonperformance of the obligation as provided in article 2201 of the Civil Code.

On the other hand, the defendants argue that Namerco having acted as a mere agent, was not liable for the liquidated damages stipulated in the alleged unenforceable contract of sale; that, as already noted, Namerco's liability should be based on tort or quasi-delict and not on the contract of sale; that if Namerco is not liable, then the insurance company, its surety, is likewise not liable; that the NPC is entitled only to nominal damages because it was able to secure the sulfur from another source (58-59 tsn November 10, 1960) and that the reduced award of stipulated damages is highly iniquitous, considering that Namerco acted in good faith and that the NPC did not suffer any actual damages.

These contentions have already been resolved in the preceding discussion. We find no sanction or justification for NPC's claim that it is entitled to the full payment of the liquidated damages computed by its official.

Ruling on the amount of damages. - A painstaking evaluation of the equities of the case in the light of the arguments of the parties as expounded in their five briefs leads to the conclusion that the damages due from the defendants should be further reduced to P45,100 which is equivalent to their bidder's bond or to about ten percent of the selling price of the sulfur.

WHEREFORE, the lower court's judgment is modified and defendants National Merchandising Corporation and Domestic Insurance Company of the Philippines are ordered to pay solidarily to the National Power Corporation the sum of P45,100.00 as liquidated damages. No costs.

SO ORDERED.

Concepcion, Jr., Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.
Makaslar, (Chairman), J., reserve his vote.

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