

JOHANNES SCHUBACK & SONS PHILIPPINE TRADING CORPORATION, PETITIONER, VS. THE HON. COURT OF APPEALS, RAMON SAN JOSE, JR., DOING BUSINESS UNDER THE NAME AND STYLE PHILIPPINE SJ I...

G.R. No. 105387. November 11, 1993

Ponente: ROMERO, J.

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ROMERO, J.:

In this petition for review on certiorari, petitioner questions the reversal by the Court of Appeals[1] of the trial court's ruling that a contract of sale had been perfected between petitioner and private respondent over bus spare parts.

The facts as quoted from the decision of the Court of Appeals are as follows:

"Sometime in 1981, defendant[2] established contact with plaintiff[3] through the Philippine Consulate General in Hamburg, West Germany, because he wanted to purchase MAN bus spare parts from Germany. Plaintiff communicated with its trading partner, Johannes Schuback and Sohne Handelsgesellschaft m.b.n. & Co. (Schuback Hamburg) regarding the spare parts defendant wanted to order.

On October 16, 1981, defendant, submitted to plaintiff a list of the parts (Exhibit B) he wanted to purchase with specific part numbers and description. Plaintiff referred the list to Schuback Hamburg for quotations. Upon receipt of the quotations, plaintiff sent to defendant a letter dated 25 November, 1981 (Exh. C) enclosing its offer on the items listed by defendant.

On December 4, 1981, defendant informed plaintiff that he preferred genuine to replacement parts, and requested that he be given a 15% discount on all items (Exh. D).

On December 17, 1981, plaintiff submitted its formal offer (Exh. E) containing the item number, quantity, part number, description, unit price and total to defendant. On December 24, 1981, defendant informed plaintiff of his desire to avail of the prices of the parts at that time and enclosed its Purchase Order No. 0101 dated 14 December 1981 (Exhs. F to F-4). Said Purchase Order contained the item number, part number and description. Defendant promised to submit the quantity per unit he wanted to order on December 28 or 29 (Exh. F).

On December 29, 1981, defendant personally submitted the quantities he wanted to Mr. Dieter Reichert, General Manager of plaintiff, at the latter's residence (t.s.n., 13 December, 1984, p. 36). The quantities were written in ink by defendant in the same Purchase Order previously submitted. At the bottom of said Purchase Order, defendant wrote in ink above his signature: 'NOTE: Above P.O. will include a 3% discount. The above will serve as our initial P.O.' (Exhs. G to G-3-a).

Plaintiff immediately ordered the items needed by defendant from Schuback Hamburg to enable defendant to avail of the old prices. Schuback Hamburg in turn ordered (Order No. 12204) the items from NDK, a supplier of MAN spare parts in West Germany. On January 4, 1982, Schuback Hamburg sent plaintiff a proforma

invoice (Exhs. N-1 to N-3) to be used by defendant in applying for a letter of credit. Said invoice required that the letter of credit be opened in favor of Schuback Hamburg. Defendant acknowledged receipt of the invoice (t.s.n., 19 December 1984, p. 40).

An order confirmation (Exhs. I, I-1) was later sent by Schuback Hamburg to plaintiff which was forwarded to and received by defendant on February 3, 1981 (t.s.n., 13 Dec. 1984, p. 42).

On February 16, 1982, plaintiff reminded defendant to open the letter of credit to avoid delay in shipment and payment of interest (Exh. J). Defendant replied, mentioning, among others, the difficulty he was encountering in securing the required dollar allocations and applying for the letter of credit, procuring a loan and looking for a partner-financier, and of finding ways 'to proceed with our orders' (Exh. K).

In the meantime, Schuback Hamburg received invoices from NDK for partial deliveries on Order No. 12204 (Direct Interrogatories, 07 Oct. 1985, p. 3). Schuback Hamburg paid NDK. The latter confirmed receipt of payments made on February 16, 1984 (Exh. C-Deposition).

On October 18, 1982, plaintiff again reminded defendant of his order and advised that the case may be endorsed to its lawyers (Exh. L). Defendant replied that he did not make any valid Purchase Order and that there was no definite contract between him and plaintiff (Exh. M). Plaintiff sent a rejoinder explaining that there is a valid Purchase Order and suggesting that defendant either proceed with the order and open a letter of credit or cancel the order and pay the cancellation fee of 30% F.O.B. value, or plaintiff will endorse the case to its lawyers (Exh. N).

Schuback Hamburg issued a Statement of Account (Exh. P) to plaintiff enclosing therewith Debit Note (Exh. O) charging plaintiff 30% cancellation fee, storage and interest charges in the total amount of DM 51,917.81. Said amount was deducted from plaintiff's account with Schuback Hamburg (Direct Interrogatories, 07 October, 1985).

Demand letters sent to defendant by plaintiff's counsel dated March 22, 1983 and June 9, 1983 were to no avail (Exhs. R and S)."

Consequently, petitioner filed a complaint for recovery of actual or compensatory damages, unearned profits, interest, attorney's fees and costs against private respondent.

In its decision dated June 13, 1988, the trial court[4] ruled in favor of petitioner by ordering private respondent to pay petitioner, among others, actual compensatory damages in the amount of DM 51,917.81, unearned profits in the amount of DM 14,061.07, or their peso equivalent.

Thereafter, private respondent elevated his case before the Court of Appeals. On February 18, 1992, the appellate court reversed the decision of the trial court and dismissed the complaint of petitioner. It ruled that there was no perfection of contract since there was no meeting of the minds as to the price between the last week of December 1981 and the first week of January 1982.

The issue posed for resolution is whether or not a contract of sale has been perfected between the parties.

We reverse the decision of the Court of Appeals and reinstate the decision of the trial court. It bears emphasizing that a "contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price x x x." [5]

Article 1319 of the Civil Code states: "Consent is manifested by the meeting of the offer and acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter offer." The facts presented to us indicate that consent on both sides has been manifested.

The offer by petitioner was manifested on December 17, 1981 when petitioner submitted its proposal containing the item number, quantity, part number, description, the unit price and total to private respondent. On December 24, 1981, private respondent informed petitioner of his desire to avail of the prices of the parts at that time and simultaneously enclosed its Purchase Order No. 0101 dated December 14, 1981. At this stage, a meeting of the minds between vendor and vendee has occurred, the object of the contract being the spare parts and the consideration, the price stated in petitioner's offer dated December 17, 1981 and accepted by the respondent on December 24, 1981.

Although said purchase order did not contain the quantity he wanted to order, private respondent made good his promise to communicate the same on December 29, 1981. At this juncture, it should be pointed out that private respondent was already in the process of executing the agreement previously reached between the parties.

Below Exh. G-3, marked as Exhibit G-3-A, there appears this statement made by private respondent: "Note. above P.O. will include a 3% discount. The above will serve as our initial P.O." This notation on the purchase order was another indication of acceptance on the part of the vendee, for by requesting a 3% discount, he implicitly accepted the price as first offered by the vendor. The immediate acceptance by the vendee of the offer was impelled by the fact that on January 1, 1982, prices would go up, as in fact, the petitioner informed him that there would be a 7% increase effective January 1982. On the other hand, concurrence by the vendor with the said discount requested by the vendee was manifested when petitioner immediately ordered the items needed by private respondent from Schuback Hamburg which in turn ordered from NDK, a supplier of MAN spare parts in West Germany.

When petitioner forwarded its purchase order to NDK, the price was still pegged at the old one. Thus, the pronouncement of the Court of Appeals that there was no confirmed price on or about the last week of December 1981 and/or the first week of January 1982 was erroneous.

While we agree with the trial court's conclusion that indeed a perfection of the contract was reached between the parties, we differ as to the exact date when it occurred, for perfection took place, not on December 29, 1981, but rather on December 24, 1981. Although the quantity to be ordered was made determinate only on December 29, 1981, quantity is immaterial in the perfection of a sales contract. What is of importance is the meeting of the minds as to the object and cause, which from the facts disclosed, show that as of December 24, 1981, these essential elements had already concurred.

On the part of the buyer, the situation reveals that private respondent failed to open an irrevocable letter of credit without recourse in favor of Johannes Schuback of Hamburg, Germany. This omission, however, does not prevent the perfection of the contract between the parties, for the opening of a letter of credit is not to be deemed a suspensive condition. The facts herein do not show that petitioner reserved title to the goods until private respondent had opened a letter of credit. Petitioner, in the course of its dealings with private respondent, did not incorporate any provision declaring their contract of sale without effect until after the fulfillment of the act of opening a letter of credit.

The opening of a letter of credit in favor of a vendor is only a mode of payment. It is not among the essential requirements of a contract of sale enumerated in Article 1305 and 1474 of the Civil Code, the absence of any of which will prevent the perfection of the contract from taking place.

To adopt the Court of Appeals' ruling that the contract of sale was dependent on the opening of a letter of credit would be untenable from a pragmatic point of view because private respondent would not be able to avail of the old prices which were open to him only for a limited period of time. This explains why private respondent immediately placed the order with petitioner which, in turn promptly contacted its trading partner in Germany. As

succinctly stated by petitioner, "it would have been impossible for respondent to avail of the said old prices since the perfection of the contract would arise much later, or after the end of the year 1981, or when he finally opens the letter of credit." [6]

WHEREFORE, the petition is GRANTED and the decision of the trial court dated June 13, 1988 is REINSTATED with modification.

SO ORDERED.

Feliciano, (Chairman), Bidin, Melo, and Vitug, JJ., concur.

[1] Penned by Justice Artemon D. Luna and concurred in by Justices Serafin E. Camilon and Celso L. Magsino.

[2] Herein private respondent.

[3] Herein petitioner.

[4] Regional Trial Court of Makati, Metro Manila, Branch 146. (Penned by Judge Jose L. Coscolluela, Jr.)

[5] Civil Code, Article 1475, C & C Commercial Corp. v. PNB, G.R. No. 92499, July 5, 1989, 175 SCRA 1; NGA v. Intermediate Appellate Court, G.R. No. 79970, March 8, 1989, 171 SCRA 131.

[6] Rollo, p. 46.

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