

LORENZO SHIPPING CORP., PETITIONER, VS. BJ MARTHEL INTERNATIONAL, INC., RESPONDENT.

G.R. No. 145483. November 19, 2004

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a petition for review seeking to set aside the Decision[1] of the Court of Appeals in CA-G.R. CV No. 54334 and its Resolution denying petitioner's motion for reconsideration.

The factual antecedents of this case are as follows:

Petitioner Lorenzo Shipping Corporation is a domestic corporation engaged in coastwise shipping. It used to own the cargo vessel M/V Dadiangas Express.

Upon the other hand, respondent BJ Marthel International, Inc. is a business entity engaged in trading, marketing, and selling of various industrial commodities. It is also an importer and distributor of different brands of engines and spare parts.

From 1987 up to the institution of this case, respondent supplied petitioner with spare parts for the latter's marine engines. Sometime in 1989, petitioner asked respondent for a quotation for various machine parts. Acceding to this request, respondent furnished petitioner with a formal quotation,[2] thus:

May 31, 1989

MINQ-6093

LORENZO SHIPPING LINES

Pier 8, North Harbor

Manila

SUBJECT: PARTS FOR ENGINE MODEL

MITSUBISHI 6UET 52/60

Dear Mr. Go:

We are pleased to submit our offer for your above subject requirements.

Description Qty. Unit Price Total Price

Nozzle Tip 6 pcs. P 5,520.00 33,120.00

Plunger & Barrel 6 pcs. 27,630.00 165,780.00

Cylinder Head 2 pcs. 1,035,000.00 2,070,000.00

Cylinder Liner 1 set 477,000.00

TOTAL PRICE FOB P2,745,900.00

MANILA _____

DELIVERY: Within 2 months after receipt of firm order.

TERMS: 25% upon delivery, balance payable in 5 bi-monthly equal
Installment[s] not to exceed 90 days.

We trust you find our above offer acceptable and look forward to your most valued order.

Very truly yours,

(SGD) HENRY PAJARILLO

Sales Manager

Petitioner thereafter issued to respondent Purchase Order No. 13839,[3] dated 02 November 1989, for the procurement of one set of cylinder liner, valued at P477,000, to be used for M/V Dadiangas Express. The purchase order was co-signed by Jose Go, Jr., petitioner's vice-president, and Henry Pajarillo. Quoted hereunder is the pertinent portion of the purchase order:

Name of Description Qty. Amount

CYL. LINER M/E 1 SET P477,000.00

NOTHING FOLLOW

INV. #

TERM OF PAYMENT: 25% DOWN PAYMENT

5 BI-MONTHLY INSTALLMENT[S]

Instead of paying the 25% down payment for the first cylinder liner, petitioner issued in favor of respondent ten postdated checks[4] to be drawn against the former's account with Allied Banking Corporation. The checks were supposed to represent the full payment of the aforementioned cylinder liner.

Subsequently, petitioner issued Purchase Order No. 14011,[5] dated 15 January 1990, for yet another unit of cylinder liner. This purchase order stated the term of payment to be "25% upon delivery, balance payable in 5 bi-monthly equal installment[s]."[6] Like the purchase order of 02 November 1989, the second purchase order did not state the date of the cylinder liner's delivery.

On 26 January 1990, respondent deposited petitioner's check that was postdated 18 January 1990, however, the same was dishonored by the drawee bank due to insufficiency of funds. The remaining nine postdated checks were eventually returned by respondent to petitioner.

The parties presented disparate accounts of what happened to the check which was previously dishonored. Petitioner claimed that it replaced said check with a good one, the proceeds of which were applied to its other obligation to respondent. For its part, respondent insisted that it returned said postdated check to petitioner.

Respondent thereafter placed the order for the two cylinder liners with its principal in Japan, Daiei Sangyo Co. Ltd., by opening a letter of credit on 23 February 1990 under its own name with the First Interstate Bank of Tokyo.

On 20 April 1990, Pajarillo delivered the two cylinder liners at petitioner's warehouse in North Harbor, Manila. The sales invoices[7] evidencing the delivery of the cylinder liners both contain the notation "subject to

verification” under which the signature of Eric Go, petitioner’s warehouseman, appeared.

Respondent thereafter sent a Statement of Account dated 15 November 1990[8] to petitioner. While the other items listed in said statement of account were fully paid by petitioner, the two cylinder liners delivered to petitioner on 20 April 1990 remained unsettled. Consequently, Mr. Alejandro Kanaan, Jr., respondent’s vice-president, sent a demand letter dated 02 January 1991[9] to petitioner requiring the latter to pay the value of the cylinder liners subjects of this case. Instead of heeding the demand of respondent for the full payment of the value of the cylinder liners, petitioner sent the former a letter dated 12 March 1991[10] offering to pay only P150,000 for the cylinder liners. In said letter, petitioner claimed that as the cylinder liners were delivered late and due to the scrapping of the M/V Dadiangas Express, it (petitioner) would have to sell the cylinder liners in Singapore and pay the balance from the proceeds of said sale.

Shortly thereafter, another demand letter dated 27 March 1991[11] was furnished petitioner by respondent’s counsel requiring the former to settle its obligation to respondent together with accrued interest and attorney’s fees.

Due to the failure of the parties to settle the matter, respondent filed an action for sum of money and damages before the Regional Trial Court (RTC) of Makati City. In its complaint,[12] respondent (plaintiff below) alleged that despite its repeated oral and written demands, petitioner obstinately refused to settle its obligations. Respondent prayed that petitioner be ordered to pay for the value of the cylinder liners plus accrued interest of P111,300 as of May 1991 and additional interest of 14% per annum to be reckoned from June 1991 until the full payment of the principal; attorney’s fees; costs of suits; exemplary damages; actual damages; and compensatory damages.

On 25 July 1991, and prior to the filing of a responsive pleading, respondent filed an amended complaint with preliminary attachment pursuant to Sections 2 and 3, Rule 57 of the then Rules of Court.[13] Aside from the prayer for the issuance of writ of preliminary attachment, the amendments also pertained to the issuance by petitioner of the postdated checks and the amounts of damages claimed.

In an Order dated 25 July 1991,[14] the court a quo granted respondent’s prayer for the issuance of a preliminary attachment. On 09 August 1991, petitioner filed an Urgent Ex-Parte Motion to Discharge Writ of Attachment[15] attaching thereto a counter-bond as required by the Rules of Court. On even date, the trial court issued an Order[16] lifting the levy on petitioner’s properties and the garnishment of its bank accounts.

Petitioner afterwards filed its Answer[17] alleging therein that time was of the essence in the delivery of the cylinder liners and that the delivery on 20 April 1990 of said items was late as respondent committed to deliver said items “within two (2) months after receipt of firm order”[18] from petitioner. Petitioner likewise sought counterclaims for moral damages, exemplary damages, attorney’s fees plus appearance fees, and expenses of litigation.

Subsequently, respondent filed a Second Amended Complaint with Preliminary Attachment dated 25 October 1991.[19] The amendment introduced dealt solely with the number of postdated checks issued by petitioner as full payment for the first cylinder liner it ordered from respondent. Whereas in the first amended complaint, only nine postdated checks were involved, in its second amended complaint, respondent claimed that petitioner actually issued ten postdated checks. Despite the opposition by petitioner, the trial court admitted respondent’s Second Amended Complaint with Preliminary Attachment.[20]

Prior to the commencement of trial, petitioner filed a Motion (For Leave To Sell Cylinder Liners)[21] alleging therein that “[w]ith the passage of time and with no definite end in sight to the present litigation, the cylinder

liners run the risk of obsolescence and deterioration”[22] to the prejudice of the parties to this case. Thus, petitioner prayed that it be allowed to sell the cylinder liners at the best possible price and to place the proceeds of said sale in escrow. This motion, unopposed by respondent, was granted by the trial court through the Order of 17 March 1991.[23]

After trial, the court a quo dismissed the action, the decretal portion of the Decision stating:

WHEREFORE, the complaint is hereby dismissed, with costs against the plaintiff, which is ordered to pay P50,000.00 to the defendant as and by way of attorney’s fees.[24]

The trial court held respondent bound to the quotation it submitted to petitioner particularly with respect to the terms of payment and delivery of the cylinder liners. It also declared that respondent had agreed to the cancellation of the contract of sale when it returned the postdated checks issued by petitioner. Respondent’s counterclaims for moral, exemplary, and compensatory damages were dismissed for insufficiency of evidence.

Respondent moved for the reconsideration of the trial court’s Decision but the motion was denied for lack of merit.[25]

Aggrieved by the findings of the trial court, respondent filed an appeal with the Court of Appeals[26] which reversed and set aside the Decision of the court a quo. The appellate court brushed aside petitioner’s claim that time was of the essence in the contract of sale between the parties herein considering the fact that a significant period of time had lapsed between respondent’s offer and the issuance by petitioner of its purchase orders. The dispositive portion of the Decision of the appellate court states:

WHEREFORE, the decision of the lower court is REVERSED and SET ASIDE. The appellee is hereby ORDERED to pay the appellant the amount of P954,000.00, and accrued interest computed at 14% per annum reckoned from May, 1991.[27]

The Court of Appeals also held that respondent could not have incurred delay in the delivery of cylinder liners as no demand, judicial or extrajudicial, was made by respondent upon petitioner in contravention of the express provision of Article 1169 of the Civil Code which provides:

Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

Likewise, the appellate court concluded that there was no evidence of the alleged cancellation of orders by petitioner and that the delivery of the cylinder liners on 20 April 1990 was reasonable under the circumstances.

On 22 May 2000, petitioner filed a motion for reconsideration of the Decision of the Court of Appeals but this was denied through the resolution of 06 October 2000.[28] Hence, this petition for review which basically raises the issues of whether or not respondent incurred delay in performing its obligation under the contract of sale and whether or not said contract was validly rescinded by petitioner.

That a contract of sale was entered into by the parties is not disputed. Petitioner, however, maintains that its obligation to pay fully the purchase price was extinguished because the adverted contract was validly terminated due to respondent’s failure to deliver the cylinder liners within the two-month period stated in the formal quotation dated 31 May 1989.

The threshold question, then, is: Was there late delivery of the subjects of the contract of sale to justify petitioner to disregard the terms of the contract considering that time was of the essence thereof?

In determining whether time is of the essence in a contract, the ultimate criterion is the actual or apparent

intention of the parties and before time may be so regarded by a court, there must be a sufficient manifestation, either in the contract itself or the surrounding circumstances of that intention.[29] Petitioner insists that although its purchase orders did not specify the dates when the cylinder liners were supposed to be delivered, nevertheless, respondent should abide by the term of delivery appearing on the quotation it submitted to petitioner.[30] Petitioner theorizes that the quotation embodied the offer from respondent while the purchase order represented its (petitioner's) acceptance of the proposed terms of the contract of sale.[31] Thus, petitioner is of the view that these two documents "cannot be taken separately as if there were two distinct contracts." [32] We do not agree.

It is a cardinal rule in interpretation of contracts that if the terms thereof are clear and leave no doubt as to the intention of the contracting parties, the literal meaning shall control.[33] However, in order to ascertain the intention of the parties, their contemporaneous and subsequent acts should be considered.[34] While this Court recognizes the principle that contracts are respected as the law between the contracting parties, this principle is tempered by the rule that the intention of the parties is primordial[35] and "once the intention of the parties has been ascertained, that element is deemed as an integral part of the contract as though it has been originally expressed in unequivocal terms." [36]

In the present case, we cannot subscribe to the position of petitioner that the documents, by themselves, embody the terms of the sale of the cylinder liners. One can easily glean the significant differences in the terms as stated in the formal quotation and Purchase Order No. 13839 with regard to the due date of the down payment for the first cylinder liner and the date of its delivery as well as Purchase Order No. 14011 with respect to the date of delivery of the second cylinder liner. While the quotation provided by respondent evidently stated that the cylinder liners were supposed to be delivered within two months from receipt of the firm order of petitioner and that the 25% down payment was due upon the cylinder liners' delivery, the purchase orders prepared by petitioner clearly omitted these significant items. The petitioner's Purchase Order No. 13839 made no mention at all of the due dates of delivery of the first cylinder liner and of the payment of 25% down payment. Its Purchase Order No. 14011 likewise did not indicate the due date of delivery of the second cylinder liner.

In the case of *Bugatti v. Court of Appeals*, [37] we reiterated the principle that "[a] contract undergoes three distinct stages – preparation or negotiation, its perfection, and finally, its consummation. Negotiation begins from the time the prospective contracting parties manifest their interest in the contract and ends at the moment of agreement of the parties. The perfection or birth of the contract takes place when the parties agree upon the essential elements of the contract. The last stage is the consummation of the contract wherein the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof."

In the instant case, the formal quotation provided by respondent represented the negotiation phase of the subject contract of sale between the parties. As of that time, the parties had not yet reached an agreement as regards the terms and conditions of the contract of sale of the cylinder liners. Petitioner could very well have ignored the offer or tendered a counter-offer to respondent while the latter could have, under the pertinent provision of the Civil Code, [38] withdrawn or modified the same. The parties were at liberty to discuss the provisions of the contract of sale prior to its perfection. In this connection, we turn to the testimonies of Pajarillo and Kanaan, Jr., that the terms of the offer were, indeed, renegotiated prior to the issuance of Purchase Order No. 13839.

During the hearing of the case on 28 January 1993, Pajarillo testified as follows:

Q:

You testified Mr. Witness, that you submitted a quotation with defendant Lorenzo Shipping Corporation dated rather marked as Exhibit A stating the terms of payment and delivery of the cylinder liner, did you not?

A:

Yes sir.

Q:

I am showing to you the quotation which is marked as Exhibit A there appears in the quotation that the delivery of the cylinder liner will be made in two months' time from the time you received the confirmation of the order. Is that correct?

A:

Yes sir.

Q:

Now, after you made the formal quotation which is Exhibit A how long a time did the defendant make a confirmation of the order?

A:

After six months.

Q:

And this is contained in the purchase order given to you by Lorenzo Shipping Corporation?

A:

Yes sir.

Q:

Now, in the purchase order dated November 2, 1989 there appears only the date the terms of payment which you required of them of 25% down payment, now, it is stated in the purchase order the date of delivery, will you explain to the court why the date of delivery of the cylinder liner was not mentioned in the purchase order which is the contract between you and Lorenzo Shipping Corporation?

A:

When Lorenzo Shipping Corporation inquired from us for that cylinder liner, we have inquired [with] our supplier in Japan to give us the price and delivery of that item. When we received that quotation from our supplier it is stated there that they can deliver within two months but we have to get our confirmed order within June.

Q:

But were you able to confirm the order from your Japanese supplier on June of that year?

A:

No sir.

Q:

Why? Will you tell the court why you were not able to confirm your order with your Japanese supplier?

A:

Because Lorenzo Shipping Corporation did not give us the purchase order for that cylinder liner.

Q:

And it was only on November 2, 1989 when they gave you the purchase order?

A:

Yes sir.

Q:

So upon receipt of the purchase order from Lorenzo Shipping Lines in 1989 did you confirm the order with your Japanese supplier after receiving the purchase order dated November 2, 1989?

A:

Only when Lorenzo Shipping Corporation will give us the down payment of 25%.[39]

For his part, during the cross-examination conducted by counsel for petitioner, Kanaan, Jr., testified in the following manner:

WITNESS:

This term said 25% upon delivery. Subsequently, in the final contract, what was agreed upon by both parties was 25% down payment.

Q:

When?

A:

Upon confirmation of the order.

...

Q:

And when was the down payment supposed to be paid?

A:

It was not stated when we were supposed to receive that. Normally, we expect to receive at the earliest possible time. Again, that would depend on the customers. Even after receipt of the purchase order which was what happened here, they re-negotiated the terms and sometimes we do accept that.

Q:

Was there a re-negotiation of this term?

A:

This offer, yes. We offered a final requirement of 25% down payment upon delivery.

Q:

What was the re-negotiated term?

A:

25% down payment

Q:

To be paid when?

A:

Supposed to be paid upon order.[40]

The above declarations remain unassailed. Other than its bare assertion that the subject contracts of sale did not undergo further renegotiation, petitioner failed to proffer sufficient evidence to refute the above testimonies of Pajarillo and Kanaan, Jr.

Notably, petitioner was the one who caused the preparation of Purchase Orders No. 13839 and No. 14011 yet it utterly failed to adduce any justification as to why said documents contained terms which are at variance with those stated in the quotation provided by respondent. The only plausible reason for such failure on the part of petitioner is that the parties had, in fact, renegotiated the proposed terms of the contract of sale. Moreover, as the obscurity in the terms of the contract between respondent and petitioner was caused by the latter when it omitted the date of delivery of the cylinder liners in the purchase orders and varied the term with respect to the due date of the down payment,[41] said obscurity must be resolved against it.[42]

Relative to the above discussion, we find the case of *Smith, Bell & Co., Ltd. v. Matti*,[43] instructive. There, we held that –

When the time of delivery is not fixed or is stated in general and indefinite terms, time is not of the essence of the contract. . . .

In such cases, the delivery must be made within a reasonable time.

The law implies, however, that if no time is fixed, delivery shall be made within a reasonable time, in the absence of anything to show that an immediate delivery intended. . . .

We also find significant the fact that while petitioner alleges that the cylinder liners were to be used for dry dock repair and maintenance of its M/V Dadiangas Express between the later part of December 1989 to early January 1990, the record is bereft of any indication that respondent was aware of such fact. The failure of petitioner to notify respondent of said date is fatal to its claim that time was of the essence in the subject contracts of sale.

In addition, we quote, with approval, the keen observation of the Court of Appeals:

. . . It must be noted that in the purchase orders issued by the appellee, dated November 2, 1989 and January 15, 1990, no specific date of delivery was indicated therein. If time was really of the essence as claimed by the appellee, they should have stated the same in the said purchase orders, and not merely relied on the quotation issued by the appellant considering the lapse of time between the quotation issued by the appellant and the purchase orders of the appellee.

In the instant case, the appellee should have provided for an allowance of time and made the purchase order earlier if indeed the said cylinder liner was necessary for the repair of the vessel scheduled on the first week of January, 1990. In fact, the appellee should have cancelled the first purchase order when the cylinder liner was not delivered on the date it now says was necessary. Instead it issued another purchase order for the second set of cylinder liner. This fact negates appellee's claim that time was indeed of the essence in the consummation of the contract of sale between the parties.[44]

Finally, the ten postdated checks issued in November 1989 by petitioner and received by the respondent as full payment of the purchase price of the first cylinder liner supposed to be delivered on 02 January 1990 fail to impress. It is not an indication of failure to honor a commitment on the part of the respondent. The earliest

maturity date of the checks was 18 January 1990. As delivery of said checks could produce the effect of payment only when they have been cashed,[45] respondent's obligation to deliver the first cylinder liner could not have arisen as early as 02 January 1990 as claimed by petitioner since by that time, petitioner had yet to fulfill its undertaking to fully pay for the value of the first cylinder liner. As explained by respondent, it proceeded with the placement of the order for the cylinder liners with its principal in Japan solely on the basis of its previously harmonious business relationship with petitioner.

As an aside, let it be underscored that "[e]ven where time is of the essence, a breach of the contract in that respect by one of the parties may be waived by the other party's subsequently treating the contract as still in force." [46] Petitioner's receipt of the cylinder liners when they were delivered to its warehouse on 20 April 1990 clearly indicates that it considered the contract of sale to be still subsisting up to that time. Indeed, had the contract of sale been cancelled already as claimed by petitioner, it no longer had any business receiving the cylinder liners even if said receipt was "subject to verification." By accepting the cylinder liners when these were delivered to its warehouse, petitioner indisputably waived the claimed delay in the delivery of said items.

We, therefore, hold that in the subject contracts, time was not of the essence. The delivery of the cylinder liners on 20 April 1990 was made within a reasonable period of time considering that respondent had to place the order for the cylinder liners with its principal in Japan and that the latter was, at that time, beset by heavy volume of work.[47]

There having been no failure on the part of the respondent to perform its obligation, the power to rescind the contract is unavailing to the petitioner. Article 1191 of the New Civil Code runs as follows:

The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The law explicitly gives either party the right to rescind the contract only upon the failure of the other to perform the obligation assumed thereunder.[48] The right, however, is not an unbridled one. This Court in the case of *University of the Philippines v. De los Angeles*, [49] speaking through the eminent civilist Justice J.B.L. Reyes, exhorts:

Of course, it must be understood that the act of a party in treating a contract as cancelled or resolved on account of infractions by the other contracting party must be made known to the other and is always provisional, being ever subject to scrutiny and review by the proper court. If the other party denied that rescission is justified, it is free to resort to judicial action in its own behalf, and bring the matter to court. Then, should the court, after due hearing, decide that the resolution of the contract was not warranted, the responsible party will be sentenced to damages; in the contrary case, the resolution will be affirmed, and the consequent indemnity awarded to the party prejudiced. (Emphasis supplied)

In other words, the party who deems the contract violated may consider it resolved or rescinded, and act accordingly, without previous court action, but it proceeds at its own risk. For it is only the final judgment of the corresponding court that will conclusively and finally settle whether the action taken was or was not correct in law. But the law definitely does not require that the contracting party who believes itself injured must first file suit and wait for a judgment before taking extrajudicial steps to protect its interest. Otherwise, the party injured by the other's breach will have to passively sit and watch its damages accumulate during the pendency of the suit until the final judgment of rescission is rendered when the law itself requires that he should exercise due diligence to minimize its own damages.[50]

Here, there is no showing that petitioner notified respondent of its intention to rescind the contract of sale between them. Quite the contrary, respondent's act of proceeding with the opening of an irrevocable letter of credit on 23 February 1990 belies petitioner's claim that it notified respondent of the cancellation of the contract of sale.

Truly, no prudent businessman would pursue such action knowing that the contract of sale, for which the letter of credit was opened, was already rescinded by the other party.

WHEREFORE, premises considered, the instant Petition for Review on Certiorari is DENIED. The Decision of the Court of Appeals, dated 28 April 2000, and its Resolution, dated 06 October 2000, are hereby AFFIRMED. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Penned by Associate Justice Eubulo G. Verzola with Associate Justices Roberto A. Barrios and Eriberto U. Rosario, Jr., concurring.

[2] Exhibit “2” for petitioner; Exhibit “A” for respondent; Records, p. 244.

[3] Exhibit “3” for petitioner; Exhibit “B” for respondent; Records, p. 6.

[4] Exhibits “4-A” to “4-J” for petitioner; Exhibits “E” to “E-9” for respondent; Records, pp. 248-250.

[5] Exhibit “5” for petitioner; Exhibit “C” for respondent; Records, p. 7.

[6] Ibid.

[7] Exhibits “G” and “H” for respondent; Records, pp. 252-253.

[8] Exhibit “J” for respondent; Records, p. 255.

[9] Exhibit “K” for respondent; Records, p. 256.

[10] Exhibit “6” for petitioner; Records, p. 269.

[11] Exhibit “S” for respondent; Records, p. 263.

[12] Records, pp. 1-5.

[13] Records, pp. 13-20.

[14] Records, pp. 27-29.

[15] Records, pp. 61-62.

[16] Records, p. 58.

[17] Records, pp. 87-95.

[18] Id.

[19] Records, pp. 115-122.

[20] Order dated 09 December 1991; Records, p. 139.

[21] Dated 20 January 1992; Records, pp. 143-144.

[22] Id.

[23] Records, p. 152.

- [24] Rollo, p. 54.
- [25] Order dated 04 December 1995; Records, pp. 389-390.
- [26] Decision dated 28 April 2000, Annex “A” of the Petition; Rollo, pp. 39-46.
- [27] Id. at 7; Rollo, p. 45.
- [28] Annex “B” of the Petition; Rollo, pp. 48-49.
- [29] 17 Am Jur 2d, §333, p.772.
- [30] Petition, p. 12; Rollo, p. 23.
- [31] Petition, p. 13; Rollo, p. 24.
- [32] Ibid.
- [33] Paramount Surety & Insurance Co., Inc. v. Court of Appeals, G.R. No. 38669, 31 March 1989, 171 SCRA 481.
- [34] Agro Conglomerates, Inc. v. Court of Appeals, et al., G.R. No. 117660, 18 December 2000, 348 SCRA 450.
- [35] Golden Diamond, Inc. v. Court of Appeals, G.R. No. 131436, 31 May 2000, 332 SCRA 605.
- [36] Carceller v. Court of Appeals and State Investments Houses, Inc., G.R. No. 124791, 10 February 1999, 302 SCRA 718, 725.
- [37] G.R. No. 138113, 17 October 2000, 343 SCRA 335, 346, citing Ang Yu Asuncion v. CA, G.R. No. 109125, 02 December 1994, 238 SCRA 602.
- [38] Article 1324 of the Civil Code states: “When the offerer has allowed the offeree a certain period to accept, the offer may be withdrawn at any time before acceptance by communicating such withdrawal, except when the option is founded upon a consideration, as something paid or promised.”
- [39] TSN, 28 January 1993, pp. 4-8.
- [40] TSN, 01 June 1993, pp. 9-10.
- [41] Supra, note 3.
- [42] Ang v. Court of Appeals, G.R. No. 80058, 13 February 1989, 170 SCRA 286.
- [43] G.R. No. 16570, 09 March 1922, 44 Phil. 874, 881-882.
- [44] Decision dated 28 April 2000, p. 5; Rollo, p. 43.
- [45] Article 1249 of the Civil Code states that “(t)he delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired.”
- [46] 17A Am Jur. 2d §624, p. 633.
- [47] TSN, 28 January 1993, p. 18.
- [48] Angeles, et al. v. Calasanz, et al., G.R. No. L-42283, 18 March 1985, 135 SCRA 329.
- [49] G.R. No. L-28602, 29 September 1970, 35 SCRA 102.

[50] Id. at 107.

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