

THE CHINESE AMERICAN BANK OF COMMERCE, PLAINTIFF AND APPELLANT, VS. MARIANO UY CHACO SONS & CO., DEFENDANT AND APPELLEE.

G.R. No. 23763. October 07, 1925

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STATEMENT

After the formal pleas, plaintiff alleges that on August 11, 1922, it sold to the defendant at its special instance and request, 4,000,000 marks at the agreed exchange price of 30 centavos for each 100 marks, amounting in all to P12,000, delivery thereof to be made on or before December 31, 1923. That defendant has only paid the sum of P1,595.44, and that there is now a balance due and owing of P10,404.56. That it was agreed that in the event the beneficiaries should not avail themselves of the total amount of credit, that the plaintiff would deliver to the defendant a demand draft on Berlin for the amount of the unused balance, or open a credit for that amount at defendant's option. That on December 27, 1923, plaintiff tendered to defendant a demand draft on Berlin for the amount of the unused balance of the marks, in accord with the agreement of August 11, 1922, and demanded that said unused balance be considered as an open credit. That plaintiff then notified defendant that said credit would not be extended for more than ninety days, which was a reasonable time. That demand for the payment of the P10,404.56 has been made and payment thereof refused.

Wherefore plaintiff prays judgment for the amount, with legal interest from June 23, 1924, the date of the filing of the complaint.

The defendant filed the following answer:

"They deny generally and specifically all and everyone of the allegations of the complaint, with the exception of those hereinafter admitted:

"They admit the facts stated in the second paragraph of subdivision II, and in the second paragraph of subdivision III, with the exception of the allegation appearing in the last two lines of said second paragraph of subdivision III, to wit, the allegation 'that ninety days is and was a reasonable time for the duration of said credit,' which is denied by the defendant.

"SPECIAL DEFENSE

"And as a special defense, the defendant alleges that the parties herein executed the contract on which the complaint is based in order that the plaintiff might facilitate the defendant in the payment by the latter for such goods and merchandise as the latter might buy in Germany, but since December, 1923, up to the present, the marks referred to in the contract have ceased to be a legal tender in Germany, and have no value at all and are not accepted as legal tender in said country, nor in any other part of the world."

The case was tried and submitted upon the following agreed statement of facts:

"1. That the plaintiff is and was at all times mentioned in the complaint a foreign banking corporation duly licensed to do business in the Philippine Islands, that defendant is and was at all times mentioned herein a

domestic corporation.

"2. That at Manila on August 11, 1922, the plaintiff and defendant entered into a written contract, a copy of which marked Exhibit A is hereto attached and made a part hereof, by which the plaintiff opened a credit on behalf of the defendant for four million (4,000,000) marks, half in favor of Gottfried Weyersberg Sohne, Solingen, Germany, and half in favor of Hugo Knoblock & Company, Hamburg, Germany, as per Exhibits B and C hereto attached and made a part hereof.

"3. That the credit opened by the plaintiff for the defendant was for the purpose of paying for goods to be ordered from time to time by the defendant from the German firms above-mentioned.

"4. That, in pursuance of said contract, the beneficiaries drew and there was paid by plaintiff to Gottfried Weyersberg Sohne for the account of defendant on February 7, 1923, the sum of marks 531,815 for which defendant paid to plaintiff the sum of P1,595.44; that the balance of said credit of marks 4,000,000, to wit marks 3,468,185, remains unused and uncalled.

"5. That the plaintiff's branch or office in Manila was closed May 26, 1923, and the plaintiff has ceased to do business in the Philippine Islands since that date.

"6. That the beneficiaries referred to in paragraph II refused from February 7, 1923, up to the present to accept German marks in payment of goods ordered by the defendant from them, as per Exhibits D, E, F and G, which are hereto attached and made a part hereof; and the defendant could not use but the amount mentioned in paragraph IV of this agreement on account of the credit.

"7. That on December 27, 1923, the plaintiff through the acting submanager of the International Bank wrote the defendant a letter, copy of which is hereto attached and made a part hereof as Exhibit H.

"8. That the defendant, in view of said Exhibits D, E, F and G from Gottfried Weyersberg Sohne and Hugo Knoblock & Company, and a letter Exhibit I, dated April 24, 1923, from Otto J. A. Krohn which is hereto attached and made a part hereof, in answer to the letter of December 27, 1923, wrote a letter dated December 29, 1923, copy of which is hereto attached and made a part hereof as Exhibit J.

"9. That the acting submanager of the International Banking Corporation wrote another letter dated December 29, 1923, to the defendant which is marked as Exhibit K and made a part hereof, in which he quoted from letters written by the plaintiff, under date of December 14 and 15, 1923, which are hereto attached and marked as Exhibits L and Ll and made a part hereof, and in answer thereto the defendant wrote a letter dated January 3, 1924, copy of which is hereto attached as Exhibit M and made a part hereof.

"10. That on January 3, 1924, the acting submanager of the International Banking Corporation wrote another letter in reply to the said answer of the defendant of even date, which letter is hereto attached and made a part hereof as Exhibit N.

"11. That on January 9, 1924, the attorneys Ross, Lawrence & Selph wrote the defendant a letter dated January 9, 1924, which is hereto attached and made a part hereof as Exhibit O demanding the payment of the sum of P10,404.56, and in answer thereto, the attorneys Feria & La O wrote, in behalf of the defendant, a letter dated January 10, 1924, copy of which is hereto attached and made a part hereof as Exhibit P; that defendant refused to pay said amount or any part thereof."

The contract in question is as follows:

"BOUGHT FROM THE CHINESE AMERICAN BANK OF COMMERCE

"Account of Messrs. Mariano Uy Chaco Sons & Co.....

"Amount four million marks (mks. 4,000,000).....

"Against 30 days sight credit bills from Berlin & Hamburg, Germany

"Drawn against our A/P's Nos. 22/30 and 22/31.....
"Exchange 30 centavos per 100 marks.....
"Payable in Philippine currency.....
"Delivery December 31, 1923.....

"DIRECT BROKER

"Confirmed:

"THE CHINESE AMERICAN BANK OF COMMERCE

(Sgd.) "VERNOR H. PETRIE, Manager

"MANILA, August 11, 1922

"It is further agreed that should the beneficiaries not avail themselves of the total amount of the credit, that we will deliver to the purchaser a demand draft on Berlin for the unused balance at the rate of 30 centavos a 100 marks or will open a credit for the amount, at their option.

"THE CHINESE AMERICAN BANK OF COMMERCE

(Sgd.) "VERNOR H. PETRIE, Manager

"MARIANO UY CHACO SONS & CO.

"(?)

"General Manager"

Judgment was rendered for the defendant, from which plaintiff appeals, assigning the following errors:

"The court erred as follows:

"I. In not finding that ninety days was a reasonable term for the credit requested by defendant.

"II. In not specifying a reasonable term for the extension of said credit as prayed for by plaintiff.

"III. In finding that by reason of the loss in value of marks that the defendant was not liable upon the contract.

"IV. In finding that plaintiff sustained no loss by reason of the failure of defendant to utilize the credit opened.

"V. In rendering judgment in favor of defendant.

"VI. In denying plaintiff's motion for a new trial."

JOHNS, J.:

There is no dispute about any material fact. The only question involved is the legal construction of the contract Exhibit A, upon which plaintiff relies. It is stipulated that by reason of that contract "plaintiff opened a credit on behalf of the defendant for four million (4,000,000) marks," half in favor of one firm in Germany, and the other half in favor of another, as evidenced by Exhibits B and C. Exhibit B is a letter of the plaintiff addressed to the

Dresden Bank, which recites: "Please open the following credit, charging drafts hereunder to the debit of our account." Amount marks 2,000,000; good until December 31, 1923; drafts at thirty days sight; drawn on defendant. "This credit is with recourse." "Documents to be attached are full sets of bills of lading made out to our order; invoices in triplicate." Drafts to be drawn in favor of Gottfried Weyersberg Sohne, Solingen, Germany.

Exhibit C is a like instruction to the same bank for the same amount for drafts drawn in favor of Hugo Knoblock & Company, Hamburg, Germany, and both exhibits are dated August 11, 1922, the date of the contract Exhibit A, It is agreed that the credit opened by the plaintiff was for the purpose of enabling the defendant to pay for goods to be ordered by it from time to time from the German firms above-named. It is admitted that pursuant to such contract, on February 7, 1923, the defendant drew and the plaintiff paid drafts for P1,595.44, the value of 531,815 marks at 30 centavos a hundred, and that the remaining balance of 3,468,185 marks has never been called for or used by the defendant. That German merchants since February 7, 1923, have refused to accept German marks in payment of goods ordered by the defendant, and that by reason thereof, the defendant could not use the balance of the credit.

The defendant contends that it bought the marks for a specific purpose, and that plaintiff had knowledge of the purpose for which they were bought, and that by reason of the fact that defendant cannot use the remainder of the marks for the purpose for which they were bought, it is not liable for the balance of the purchase price, and in legal effect that is what the lower court held.

The contract, Exhibit A, expressly recites:

"BOUGHT FROM THE CHINESE AMERICAN BANK OF COMMERCE

"Account of Messrs. Mariano Uy Chaco Sons & Co.....

"Amount four million marks (mks. 4,000,000).....

"Against 30 days sight credit bills from Berlin & Hamburg, Germany

"Drawn against our A/P's Nos. 22/30 and 22/31.....

"Exchange 30 centavos per 100 marks.....

"Payable in Philippine currency.....

"Delivery December 31, 1923.....

This is an express recital that on August 11, 1922, the defendant bought 4,000,000 marks at the agreed purchase price of 30 centavos for each 100, and the letters of the plaintiff, Exhibits B and C, give the defendant an open credit for the full amount of the 4,000,000 marks "good until December 31, 1923," and specifically directs the Dresden Bank to "please open the following credit, charging drafts hereunder to the debit of our account." That is to say that upon the signing of the contract, the plaintiff directed the German bank to open up a credit in favor of the defendant for the full amount of the 4,000,000 marks at the rate of 30 centavos for each 100, and to honor the drafts of the defendant for the full amount of the purchase price of 4,000,000 marks. Under such instructions from the plaintiff, the defendant could have drawn the drafts for the full amount, which would have been honored and paid by the German bank. In other words, there is no claim or pretense that the plaintiff has failed or neglected to keep or perform any of the terms or conditions of the contract, Exhibit A. It is admitted that the defendant only drew drafts for the amount of 531,815 marks, and that the drafts were paid as drawn. The defendant now pleads as a defense that the marks "have ceased to be a legal tender in Germany, and have no value at all." In other words, the value of marks have gone down, and they have ceased to have any value, and for such reasons, the defendant cannot use them for the purpose for which they were purchased, and that it does not want them now for any purpose, and for such reason, it is not liable.

Upon this point, it will be noted that when the first part of the contract, Exhibit A, was signed, the following clause was added: "It is further agreed that should the beneficiaries not avail themselves of the total amount of the

credit, that we will deliver to the purchaser a demand draft on Berlin for the unused balance at the rate of 30 centavos a 100 marks or will open a credit for the amount, at their option," which was also signed by both parties to the contract. From this it is very apparent that at the time the first clause of the contract was signed, the defendant knew and understood that it might not want to use the whole amount in the purchase of goods in Germany, and for such reason, it was agreed that should they not use "the total amount of the credit" of the 4,000,000 marks, that then in that event, they should have a demand draft on Berlin for the unused balance of the 4,000,000 marks, or that they should have a right with the plaintiff to "open a credit for that amount."

The purpose and intent of the last clause of Exhibit A is very apparent. It was intended to provide for the very thing which happened in this case. The construction for which defendant contends would nullify and destroy all of the last clause of Exhibit A.

Contracts must be construed as a whole, and full force and effect should be given to every clause in a contract, and the last clause of Exhibit A specifically provides for the very thing which happened in this case.

It may be true that the defendant bought the 4,000,000 marks with the purpose and intent of using their proceeds for the payment of goods, wares and merchandise in Germany. Be that as it may, the contract to purchase specifically recites that for all of that portion of the marks which is not used, the defendant, at its option, shall have "a demand draft on Berlin" or the right to "open a credit for the amount." This construction gives full force and meaning to all the terms and provisions of the contract, Exhibit A. This construction is further strengthened by the direction of the plaintiff to the Dresden Bank, in which it is said:

"Please open the following credit, charging drafts negotiated hereunder to the debit of our account."

That is to say, while the defendant was given an open credit for 4,000,000 marks, in the event that drafts for that amount were drawn on or before December 31, 1923, neither the plaintiff nor the defendant was to be finally charged with the full amount, unless drafts were drawn and negotiated for the full amount, but if drafts were drawn for the full amount, they were to be honored and paid. Thus leaving the matter of any unused balance open to be settled and determined between the plaintiff and the defendant under the second clause of Exhibit A.

As we construe it, Exhibit A is an executed contract in and by which, on August 11, 1922, the plaintiff sold and the defendant bought 4,000,000 marks at the agreed price of 30 centavos for each 100, upon which the defendant has paid P1,595.44, leaving a balance due and owing of P10,404.56, which is the amount plaintiff claims.

Plaintiff alleges that on December 27, 1923, it tendered to the defendant a demand draft on Berlin for the unused balance of the 4,000,000 marks in accord with the agreement of August 11, 1922, and demanded payment for the agreed amount of the contract price. That on December 29, 1923, the defendant refused to accept and pay for said draft "and demanded that said unused balance be considered as an open credit."

It is very apparent that, if the price of marks had gone up, the defendant would have insisted that the plaintiff carry out its contract, but because the price of marks have gone down, the defendant now wants to be relieved from its legal liability. Instead of exercising its option provided for in the second clause of the contract, defendant declined to do that, and now disclaims all liability for the simple reason that it does not want the marks, because they are worthless.

The judgment of the lower court is reversed, and one will be entered here in favor of the plaintiff and against the defendant for P10,404.56, with interest thereon from June 23, 1924, at the rate of 6 per cent per annum, and costs. Of course, it follows that the plaintiff must make and keep good its tender alleged in the complaint. So ordered.

Avanceña, C. J., Street, Villamor, Ostrand, and Romualdez, JJ., concur.
Malcolm and Villa-Real, JJ., dissent.

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