

**PACIFIC COMMERCIAL COMPANY, PLAINTIFF AND APPELLEE, VS.
ERMITA MARKET & COLD STORES, INC., DEFENDANT AND
APPELLANT.**

G.R. No. 34727. March 09, 1932

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is an appeal from a judgment of the Court of First Instance of Manila, ordering defendant to pay plaintiff the sum of P1,740 with interest thereon at the rate of 10 per cent per annum from January 1, 1928, to date of payment; likewise, to pay plaintiff P174 for attorneys' fees and costs of collection; and to pay P250.67 with legal interest from date of filing of complaint to date of payment for work, labor, and services rendered and for materials used in the installation of a refrigerating machine for the defendant, and pay the costs.

It appears that on September 14, 1927, the Pacific Commercial Co., the plaintiff herein, sold to the Ermita Market & Cold Stores, Inc., the defendant herein, an automatic refrigerating machine of the following description:

"Una maquina refrigeradora automatica York Style Y-26 capacidad Dos toneladas de refrigeracion consistente en: Compresor de amoniaco York, de Doble Cilindro, Condensador, Recibidor, Separador de aceite, Juego de manometros, Valvulas, Valvula reguladora de agua, Control automatico, Aparato de seguridad, Motor Electrico G-E de cinco caballos de fuerza 220 volts—Corriente alterna, de Una Fase, montadas todas en una base de hierro, asi como tambien incluye una bomba centrifuga para circulacion de agua y correas."

The parties signed the usual printed sales-contract form of the plaintiff company, the purchase price being P2,550, payable by instalments on dates and in amounts stated in the sales contract. The delivery of the machine was made on December 7, 1927, and by mutual agreement between the vendor and the vendee, the former installed the machine which was completed on December 26, 1927. The installation, including materials used, amounted to P250.67, to be paid by the Ermita Market & Cold Stores, Inc., to the Pacific Commercial Company. Complying with the terms of the sales contract, the defendant paid the plaintiff the amount of P810 against the purchase price of the machine, leaving a balance of P1,740.

A few days after the installation of the automatic refrigerating machine, the Ermita Market & Cold Stores advised the Pacific Commercial Company that, the machine was not serving the purpose for which it was sold to defendant and that it was lacking ammonia receiver and oil separator. The plaintiff company in turn advised the defendant that the machine installed was complete, having all the accessories as stated in the contract. However, upon the insistence of the defendant, the plaintiff, just to please the president of the defendant company, delivered and installed on the machine an additional oil separator without charge. The machine did not give the results expected from it, and the defendant refused to pay the balance of its purchase price and the cost of the installation of the machine. The Pacific Commercial Company thereupon brought this action.

In its answer, the defendant generally and specifically denied the allegations contained in plaintiff's complaint, and by way of special defense alleged substantially that the machine delivered to the defendant by the plaintiff

was not the machine described in the contract of sale inasmuch as the said machine was not automatic and as it was lacking ammonia receiver, oil separator, and the implements necessary to make the said machine automatic.

By way of cross-complaint, the defendant further alleges that it bought the machine in question from the plaintiff for the purpose of running the business of cold storage; that the temperature in the refrigerating rooms did not reach, and had never reached, the necessary temperature for the preservation of meat, fish, vegetables, and fruits; that owing to the negligence of the plaintiff in not repairing or putting in good working condition the said refrigerating machine, the defendant had been forced to close its establishment and for which reason the defendant claimed damages against the plaintiff as follows:

"P5,000 for expenses in advertising and propaganda;

"P15,000 as the value of fish, pork, meat, vegetables and fruits alleged to have deteriorated in the refrigerating rooms; .

"P30,000 for the loss of its clientele and decrease in its sales;

"P20,000 for the loss of the whole business; and

"P3,600 for rentals of the premises, salaries of the manager, guard and warehouseman, from May 10, 1928, up to October of the same year, at the rate of P600 a month, because of the refusal of the plaintiff to withdraw the refrigerating machine in question from the premises where it was installed. In other words, the defendant asks for damages in the total sum of P73,600."

Replying to the defendant's cross-complaint, the plaintiff denied generally and specifically each and every allegation in the said cross-complaint and by way of special defense, alleged that whatever defects or deficiency there might have been in the temperature in the refrigerating rooms of defendant's establishment, or in the functioning of the machine, these were due to the defects and imperfections of the coils which were supplied and installed by the defendant itself, as well as to the incompetency and inefficiency of the defendant's personnel to operate the machine.

After trial, the court below rendered the judgment above mentioned, and, as hereinbefore stated, the defendant appealed to this court.

After a careful examination of the record, we have not the least doubt that the plaintiff delivered the machine as described in the sales contract, and the fact that the defendant could not use it satisfactorily in the three cold stores divisions cannot be attributed to plaintiff's fault; as far as we can see, the machine was strictly in accordance with the written contract between the parties, and the defendant can hardly honestly say that there was any deception by the plaintiff; (See article 327, Code of Commerce; *Palanca vs. Fred Wilson & Co.*, 37 Phil., 506.)

But it is clear, that the defendant company did not fully understand the use of the motor. It complains that the machine would not properly refrigerate the refrigerating rooms, but it is evident that the machine could not operate automatically when the defendant had three refrigerating rooms which it expected to maintain at three different temperatures.

The defendant also complained that the machine was not equipped with a thermostat and that the lack of it obstructed the work of the refrigerating. In the first place, the thermostat was not included in the sales contract and in the second place it would not have been of any service to defendant because it could not possibly operate automatically at three different temperatures with the defendant's insufficient equipment.

The defendant's complaint that the machine did not contain an oil separator is not true; the oil separator is combined with the receiver and condenser in a single combined piece in the machine.

The evidence in this case is clear to us, and we cannot find any errors committed by the court below. It may be that the machine could have given satisfaction to the defendant if the coils had been installed properly and the machine had been operated by competent persons. Any deficiency in this regard could not be the plaintiff's fault; the coils were supplied and installed by someone other than the plaintiff, and the machine was being operated by the defendant itself.

The judgment appealed from is therefore affirmed in its entirety, with costs against appellant. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Romualdez, Villa-Real, and Imperial, JJ., concur.

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