

**VISAYAN SAWMILL COMPANY, INC., AND ANG TAY, PETITIONERS,
VS. THE HONORABLE COURT OF APPEALS AND RJH TRADING,
REPRESENTED BY RAMON J. HIBIONADA, PROPRIETOR,
RESPONDENTS.**

G.R. No. 83851. March 03, 1993

Ponente: DAVIDE, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-83851/>

DAVIDE, JR., J.:

By this petition for review under Rule 45 of the Rules of Court, petitioners urge this Court to set aside the decision of public respondent Court of Appeals in C.A.-G.R. CV No. 08807,[1] promulgated on 16 March 1988, which affirmed with modification, in respect to the moral damages, the decision of the Regional Trial Court (RTC) of Iloilo in Civil Case No. 15128, an action for specific performance and damages, filed by the herein private respondent against the petitioners. The dispositive portion of the trial court's decision reads as follows:

"IN VIEW OF THE ABOVE FINDINGS, judgment is hereby rendered in favor of plaintiff and against the defendants ordering the latter to pay jointly and severally plaintiff, to wit:

- 1) The sum of Thirty-Four Thousand Five Hundred Eighty Three and 16/100 (P34,583.16), as actual damages;
- 2) The sum of One Hundred Thousand (P100,000.00) Pesos, as moral damages;
- 3) The sum of Ten Thousand (P10,000.00) Pesos, as exemplary damages;
- 4) The sum of TWENTY Five Thousand (P25,000.00) Pesos, as attorney's fees; and
- 5) The sum of Five Thousand (P5,000.00) Pesos as actual litis expenses."[2]

The public respondent reduced the amount of moral damages to P25,000.00.

The antecedent facts, summarized by the public respondent, are as follows:

"On May 1, 1983, herein plaintiff-appellee and defendants-appellants entered into a sale involving scrap iron located at the stockyard of defendant-appellant corporation at Cawitan, Sta. Catalina, Negros Oriental, subject to the condition that plaintiff-appellee will open a letter of credit in the amount of P250,000.00 in favor of defendant-appellant corporation on or before May 15, 1983. This is evidenced by a contract entitled 'Purchase and Sale of Scrap Iron' duly signed by both parties.

On May 17, 1983, plaintiff-appellee through his man (sic), started to dig and gather and (sic) scrap iron at the defendant-appellant's (sic) premises, proceeding with such endeavor until May 30 when defendants-appellants allegedly directed plaintiff-appellee's men to desist from pursuing the work in view of an alleged case filed against plaintiff-appellee by a certain Alberto Pursuelo. This, however, is denied by defendants-appellants who allege that on May 23, 1983, they sent a telegram to plaintiff-appellee cancelling the contract of sale because of failure of the latter to comply with the conditions thereof.

On May 24, 1983, plaintiff-appellee informed defendants-appellants by telegram that the letter of credit was opened May 12, 1983 at the Bank of the Philippine Islands main office in Ayala, but that (sic) the transmittal was delayed.

On May 26, 1983, defendants-appellants received a letter advice from the Dumaguete City Branch of the Bank of the Philippine Islands dated May 26, 1983, the content of which is quoted (sic) as follows:

‘Please be advised that we have received today cable advice from our Head Office which reads as follows:

‘Open today our irrevocable Domestic Letter of Credit No. 01456-d for (sic) P250,000.00 favor ANG TAY c/o Visayan Sawmill Co., Inc. Dumaguete City, Negros Oriental Account of ARMACO--MARSTEEL ALLOY CORPORATION 2nd Floor Alap 1 Bldg., 140 Alfaro stp (sic) Salcedo Village, Makati, Metro Manila Shipments of about 500 MT of assorted steel scrap marine/heavy equipment expiring on July 24, 1983 without recourse at sight draft drawn on Armaco Marsteel Alloy Corporation accompanied by the following documents: Certificate of Acceptance by Armaco-Marsteel Alloy Corporation shipment from Dumaguete City to buyer's warehouse partial shipment allowed/transshipment (sic) not allowed’

For your information’

On July 19, 1983, plaintiff-appellee sent a series of telegrams stating that the case filed against him by Pursuelo had been dismissed and demanding that defendants-appellants comply with the deed of sale, otherwise a case will be filed against them.

In reply to those telegrams, defendants-appellants' lawyer, on July 20, 1983 informed plaintiff-appellee's lawyer that defendant-appellant corporation is unwilling to continue with the sale due to plaintiff-appellee's failure to comply with essential pre-conditions of the contract.

On July 29, 1983, plaintiff-appellee filed the complaint below with a petition for preliminary attachment. The writ of attachment was returned unserved because the defendant-appellant corporation was no longer in operation and also because the scrap iron as well as other pieces of machinery can no longer be found on the premises of the corporation.”[3]

In his complaint, private respondent prayed for judgment ordering the petitioner corporation to comply with the contract by delivering to him the scrap iron subject thereof; he further sought an award of actual, moral and exemplary damages, attorney's fees and the costs of the suit.[4]

In their Answer with Counterclaim,[5] petitioners insisted that the cancellation of the contract was justified because of private respondent's non-compliance with essential pre-conditions, among which is the opening of an irrevocable and unconditional letter of credit not later than 15 May 1983.

During the pre-trial of the case on 30 April 1984, the parties defined the issues to be resolved; these issues were subsequently embodied in the pre-trial order, to wit:

"1. Was the contract entitled Purchase and Sale of Scrap Iron, dated May 1, 1983 executed by the parties cancelled and terminated before the Complaint was filed by anyone of the parties; if so, what are the grounds and reasons relied upon by the cancelling parties; and were the reasons or grounds for cancelling valid and justified?

2. Are the parties entitled to damages they respectively claim under the pleadings?"[6]

On 29 November 1985, the trial court rendered its judgment, the dispositive portion of which was quoted earlier.

Petitioners appealed from said decision to the Court of Appeals which docketed the same as C.A.-G.R. CV No. 08807. In their Brief, petitioners, by way of assigned errors, alleged that the trial court erred:

- "1. In finding that there was delivery of the scrap iron subject of the sale;
2. In not finding that plaintiff had not complied with the conditions in the contract of sale;
3. In finding that defendants-appellants were not justified in cancelling the sale;
4. In awarding damages to the plaintiff as against the defendants-appellants;
5. In not awarding damages to defendants-appellants."[7]

Public respondent disposed of these assigned errors in this wise:

"On the first error assigned, defendants-appellants argue that there was no delivery because the purchase document states that the seller agreed to sell and the buyer agreed to buy 'an undetermined quantity of scrap iron and junk which the seller will identify and designate.' Thus, it is contended, since no identification and designation was made, there could be no delivery. In addition, defendants-appellants maintain that their obligation to deliver cannot be completed until they furnish the cargo trucks to haul the weighed materials to the wharf.

The arguments are untenable. Article 1497 of the Civil Code states:

'The thing sold shall be understood as delivered when it is placed in the control and possession of the vendee.'

In the case at bar, control and possession over the subject matter of the contract was given to plaintiff-appellee, the buyer, when the defendants-appellants as the sellers allowed the buyer and his men to enter the corporation's premises and to dig-up the scrap iron. The pieces of scrap iron then (sic) placed at the disposal of the buyer. Delivery was therefore complete. The identification and designation by the seller does not complete delivery.

On the second and third assignments of error, defendants-appellants argue that under Articles 1593 and 1597 of the Civil Code, automatic rescission may take place by a mere notice to the buyer if the latter committed a breach of the contract of sale.

Even if one were to grant that there was a breach of the contract by the buyer, automatic rescission cannot take place because, as already (sic) stated, delivery had already been made. And, in cases where there has already been delivery, the intervention of the court is necessary to annul the contract.

As the lower court aptly stated:

'Respecting these allegations of the contending parties, while it is true that Article 1593 of the New Civil Code provides that with respect to movable property, the rescission of the sale shall of right take place in the interest of the vendor, if the vendee fails to tender the price at the time or period fixed or agreed, however, automatic rescission is not allowed if the object sold has been delivered to the buyer (Guevarra vs. Pascual, 13 Phil. 311; Escueta vs. Pando, 76 Phil. 256), the action being one to rescind judicially and where (sic) Article 1191, supra, thereby applies. There being already an implied delivery of the items, subject matter of the contract between the parties in this case, the defendant having surrendered the premises where the scrap (sic) were found for plaintiff's men to dig and gather, as in fact they had dug and gathered, this Court finds the mere notice of resolution by the defendants untenable and not conclusive on the rights of the plaintiff (Ocejo Perez vs. Int. Bank, 37 Phil. 631). Likewise, as early as in the case of Song Fo vs. Hawaiian Philippine Company, it has been ruled that rescission cannot be sanctioned for a slight or casual breach (47 Phil. 821).'

In the case of Angeles vs. Calasanz (135 (1935) SCRA 323), the Supreme Court ruled:

'Article 1191 is explicit. In reciprocal obligations, either party has the right to rescind the contract upon failure of the other to perform the obligation assumed thereunder.

Of course, it must be understood that the right 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.'

Thus, rescission in cases falling under Article 1191 of the Civil Code is always subject to review by the courts and cannot be considered final.

In the case at bar, the trial court ruled that rescission is improper because the breach was very slight and the delay in opening the letter of credit was only 11 days.

'Where time is not of the essence of the agreement, a slight delay by one party in the performance of his obligation is not a sufficient ground for rescission of the agreement. Equity and justice mandates (sic) that the vendor be given additional (sic) period to complete payment of the purchase price.' (Taguda vs. Vda. de De Leon, 132 SCRA (1984), 722).'

There is no need to discuss the fourth and fifth assigned errors since these are merely corollary to the first three assigned errors." [8]

Their motion to reconsider the said decision having been denied by public respondent in its Resolution of 4 May 1988, [9] petitioners filed this petition reiterating the abovementioned assignment of errors.

There is merit in the instant petition.

Both the trial court and the public respondent erred in the appreciation of the nature of the transaction between the petitioner corporation and the private respondent. To this Court's mind, what obtains in the case at bar is a mere contract to sell or promise to sell, and not a contract of sale.

The trial court assumed that the transaction is a contract of sale and, influenced by its view that there was an "implied delivery" of the object of the agreement, concluded that Article 1593 of the Civil Code was inapplicable; citing Guevarra vs. Pascual [10] and Escueta vs. Pando, [11] it ruled that rescission under Article 1191 of the Civil Code could only be done judicially. The trial court further classified the breach committed by the private respondent as slight or casual, foreclosing, thereby, petitioners' right to rescind the agreement.

Article 1593 of the Civil Code provides:

"ART. 1593. With respect to movable property, the rescission of the sale shall of right take place in the interest of the vendor, if the vendee, upon the expiration of the period fixed for the delivery of the thing, should not have appeared to receive it, or, having appeared, he should not have tendered the price at the same time, unless a longer period has been stipulated for its payment."

Article 1191 provides:

"ART. 1191. 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 injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period."

X X X

Sustaining the trial court on the issue of delivery, public respondent cites Article 1497 of the Civil Code which provides:

"ART. 1497. The thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee."

In the agreement in question, entitled PURCHASE AND SALE OF SCRAP IRON,[12] the seller bound and promised itself to sell the scrap iron upon the fulfillment by the private respondent of his obligation to make or indorse an irrevocable and unconditional letter of credit in payment of the purchase price. Its principal stipulation reads, to wit:

x x x

"Witnesseth:

That the SELLER agrees to sell, and the BUYER agrees to buy, an undetermined quantity of scrap iron and junk which the SELLER will identify and designate now at Cawitan, Sta. Catalina, Negros Oriental, at the price of FIFTY CENTAVOS (P0.50) per kilo on the following terms and conditions:

1. Weighing shall be done in the premises of the SELLER at Cawitan, Sta. Catalina, Neg. Oriental.
2. To cover payment of the purchase price, BUYER will open, make or indorse an irrevocable and unconditional letter of credit not later than May 15, 1983 at the Consolidated Bank and Trust Company, Dumaguete City, Branch, in favor of the SELLER in the sum of TWO HUNDRED AND FIFTY THOUSAND PESOS (P250,000.00), Philippine Currency.
3. The SELLER will furnish the BUYER free of charge at least three (3) cargo trucks with drivers, to haul the weighed materials from Cawitan to the TSMC wharf at Sta. Catalina for loading on BUYER's barge. All expenses for labor, loading and unloading shall be for the account of the BUYER.
4. SELLER shall be entitled to a deduction of three percent (3%) per ton as rust allowance." (Emphasis supplied)

The petitioner corporation's obligation to sell is unequivocally subject to a positive suspensive condition, i.e., the private respondent's opening, making or indorsing of an irrevocable and unconditional letter of credit. The former agreed to deliver the scrap iron only upon payment of the purchase price by means of an irrevocable and unconditional letter of credit. Otherwise stated, the contract is not one of sale where the buyer acquired ownership over the property subject to the resolutive condition that the purchase price would be paid after delivery. Thus, there was to be no actual sale until the opening, making or indorsing of the irrevocable and unconditional letter of credit. Since what obtains in the case at bar is a mere promise to sell, the failure of the private respondent to comply with the positive suspensive condition cannot even be considered a breach -- casual or serious -- but simply an event that prevented the obligation of petitioner corporation to convey title from acquiring binding force. In *Luzon Brokerage Co., Inc. vs. Maritime Building Co., Inc.*, [13] this Court stated:

"x x x The upshot of all these stipulations is that in seeking the ouster of Maritime for failure to pay the price as agreed upon, Myers was not rescinding (or more properly, resolving) the contract, but precisely enforcing it according to its express terms. In its suit Myers was not seeking restitution to it of the ownership of the thing sold (since it was never disposed of), such restoration being the logical consequence of the fulfillment of a resolutive condition, express or implied (article 1190); neither was it seeking a declaration that its obligation to sell was extinguished. What it sought was a judicial declaration that because the suspensive condition (full and punctual payment) had not been fulfilled, its obligation to sell to Maritime never arose or never became effective and, therefore, it (Myers) was entitled to repossess the property object of the contract, possession being a mere incident to its right of ownership. It is elementary that, as stated by Castan, --

'b) Si la condicion suspensiva llega a faltar, la obligacion se tiene por no existente, y el acreedor pierde todo derecho, incluso el de utilizar las medidas conser-vativas.' (3 Castàn, Derecho Civil, 7a Ed., p. 107). (Also

Puig Peña, Der. Civ., T. IV (1), p. 113)'."

In the instant case, not only did the private respondent fail to open, make or indorse an irrevocable and unconditional letter of credit on or before 15 May 1983 despite his earlier representation in his 24 May 1983 telegram that he had opened one on 12 May 1983, the letter of advice received by the petitioner corporation on 26 May 1983 from the Bank of the Philippine Islands Dumaguete City branch explicitly makes reference to the opening on that date of a letter of credit in favor of petitioner Ang Tay c/o Visayan Sawmill Co. Inc., drawn without recourse on ARMACO-MARSTEEL ALLOY CORPORATION and set to expire on 24 July 1983, which is indisputably not in accordance with the stipulation in the contract signed by the parties on at least three (3) counts: (1) it was not opened, made or indorsed by the private respondent, but by a corporation which is not a party to the contract; (2) it was not opened with the bank agreed upon; and (3) it is not irrevocable and unconditional, for it is without recourse, it is set to expire on a specific date and it stipulates certain conditions with respect to shipment. In all probability, private respondent may have sold the subject scrap iron to ARMACO-MARSTEEL ALLOY CORPORATION, or otherwise assigned to it the contract with the petitioners. Private respondent's complaint fails to disclose the sudden entry into the picture of this corporation.

Consequently, the obligation of the petitioner corporation to sell did not arise; it therefore cannot be compelled by specific performance to comply with its prestation. In short, Article 1191 of the Civil Code does not apply; on the contrary, pursuant to Article 1597 of the Civil Code, the petitioner corporation may totally rescind, as it did in this case, the contract. Said Article provides:

"ART. 1597. Where the goods have not been delivered to the buyer, and the buyer has repudiated the contract of sale, or has manifested his inability to perform his obligations, thereunder, or has committed a breach thereof, the seller may totally rescind the contract of sale by giving notice of his election so to do to the buyer."

The trial court ruled, however, and the public respondent was in agreement, that there had been implied delivery in this case of the subject scrap iron because on 17 May 1983, private respondent's men started digging up and gathering scrap iron within the petitioner's premises. The entry of these men was upon the private respondent's request. Paragraph 6 of the Complaint reads:

"6. That on May 17, 1983 Plaintiff with the consent of defendant Ang Tay sent his men to the stockyard of Visayan Sawmill Co., Inc. at Cawitan, Sta. Catalina, Negros Oriental to dig and gather the scrap iron and stock the same for weighing." [14]

This permission or consent can, by no stretch of the imagination, be construed as delivery of the scrap iron in the sense that, as held by the public respondent, citing Article 1497 of the Civil Code, petitioners placed the private respondent in control and possession thereof. In the first place, said Article 1497 falls under the Chapter [15] Obligations of the Vendor, which is found in Title VI (Sales), Book IV of the Civil Code. As such, therefore, the obligation imposed therein is premised on an existing obligation to deliver the subject of the contract. In the instant case, in view of the private respondent's failure to comply with the positive suspensive condition earlier discussed, such an obligation had not yet arisen. In the second place, it was a mere accommodation to expedite the weighing and hauling of the iron in the event that the sale would materialize. The private respondent was not thereby placed in possession of and control over the scrap iron. Thirdly, We cannot even assume the conversion of the initial contract or promise to sell into a contract of sale by the petitioner corporation's alleged implied delivery of the scrap iron because its action and conduct in the premises do not support this conclusion. Indeed, petitioners demanded the fulfillment of the suspensive condition and eventually cancelled the contract.

All told, Civil Case No. 15128 filed before the trial court was nothing more than the private respondent's preemptive action to beat the petitioners to the draw.

One last point. This Court notes the palpably excessive and unconscionable moral and exemplary damages awarded by the trial court to the private respondent despite a clear absence of any legal and factual basis therefor. In contracts, such as in the instant case, moral damages may be recovered if defendants acted fraudulently and in bad faith,[16] while exemplary damages may only be awarded if defendants acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.[17] In the instant case, the refusal of the petitioners to deliver the scrap iron was founded on the non-fulfillment by the private respondent of a suspensive condition. It cannot, therefore, be said that the herein petitioners had acted fraudulently and in bad faith or in a wanton, reckless, oppressive or malevolent manner. What this Court stated in *Inhelder Corp. vs. Court of Appeals*[18] needs to be stressed anew:

"At this juncture, it may not be amiss to remind Trial Courts to guard against the award of exorbitant (sic) damages that are way out of proportion to the environmental circumstances of a case and which, time and again, this Court has reduced or eliminated. Judicial discretion granted to the Courts in the assessment of damages must always be exercised with balanced restraint and measured objectivity."

For, indeed, moral damages are emphatically not intended to enrich a complainant at the expense of the defendant. They are awarded only to enable the injured party to obtain means, diversion or amusements that will serve to obviate the moral suffering he has undergone, by reason of the defendant's culpable action. Its award is aimed at the restoration, within the limits of the possible, of the spiritual status quo ante, and it must be proportional to the suffering inflicted.[19]

WHEREFORE, the instant petition is GRANTED. The decision of public respondent Court of Appeals in C.A.-G.R. CV No. 08807 is REVERSED and Civil Case No. 15128 of the Regional Trial Court of Iloilo is ordered DISMISSED.

Costs against the private respondent.
SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, and Bellosillo, JJ., concur.
Griño-Aquino, Regalado, Nocon, and Campos, Jr., JJ., join J. Romero in her dissenting opinion.
Gutierrez, Jr., J., on terminal leave.
Melo and Quiason, JJ., no part.

[1] Rollo, 18-25.

[2] Rollo, 60-61.

[3] Rollo, 61-62.

[4] Id., 34-40.

[5] Id., 44-52.

[6] Rollo, 8.

[7] Id., 62-63.

[8] Rollo, 63-65.

[9] Id., 27.

[10] 12 Phil. 311 [1908].

[11] 76 Phil. 256 [1946].

[12] Annex "A" of Complaint; Rollo, 41.

[13] 46 SCRA 381, 387 [1972].

[14] Rollo, 35.

[15] Chapter 4.

[16] Article 2220, Civil Code; Zenith Insurance Corp. vs. Court of Appeals, 185 SCRA 398 [1990].

[17] Article 2232, Id.

[18] 122 SCRA 576, 585 [1983].

[19] R&B Surety & Insurance Co., Inc. vs. Intermediate Appellate Court, 129 SCRA 736 [1984] citing Grand Union Supermarket, Inc. vs. Espina, Jr., 94 SCRA 53 [1979], citing the concurring and dissenting opinion of Justice J.B.L. Reyes in Pangasinan Transportation Company vs. Legaspi, 12 SCRA 597 [1964]; Radio Communications of the Phils., Inc. vs. Rodriguez, 182 SCRA 899 [1990].

DISSENTING OPINION

ROMERO, J.:

I vote to dismiss the petition.

Petitioner corporation, Visayan Sawmill Co., Inc., entered into a contract on May 1, 1983 with private respondent RJH Trading Co. represented by private respondent Ramon J. Hibionada. The contract, entitled "PURCHASE AND SALE OF SCRAP IRON," stated:

This contract for the Purchase and Sale of Scrap Iron, made and executed at Dumaguete City, Phil., this 1st day of May, 1983 by and between:

VISAYAN SAWMILL CO., INC., ... hereinafter called the SELLER, and

RAMON J. HIBIONADA, ... hereinafter called the BUYER,

witnesseth:

That the SELLER agrees to sell, and the BUYER agrees to buy, an undetermined quantity of scrap iron and junk which the SELLER will identify and designate now at Cawitan, Sta. Catalina, Negros Oriental, at the price of FIFTY CENTAVOS (P.50) per kilo on the following terms and conditions:

1. Weighing shall be done in the premises of the SELLER at Cawitan, Sta. Catalina, Negros Oriental.
2. To cover payment of the purchase price BUYER will open, make or indorse an irrevocable and unconditional letter of credit not later than May 15, 1983 at the Consolidated Bank and Trust Company, Dumaguete City Branch, in favor of the SELLER in the sum of TWO HUNDRED AND FIFTY THOUSAND PESOS (P250,000.00), Philippine currency.
3. The SELLER will furnish the BUYER free of charge at least three (3) cargo trucks with drivers, to haul the weighed materials from Cawitan to the TSMC wharf at Sta. Catalina for loading on BUYER'S barge. All expenses for labor, loading and unloading shall be for the account of the BUYER.
4. SELLER shall be entitled to a deduction of three percent (3%) per ton as rust allowance.

x x x

On May 17, 1983, the workers of private respondents were allowed inside petitioner company's premises in order to gather the scrap iron. However, on May 23, 1983, petitioner company sent a telegram which stated:

"RAMON HIBIONADA
RJH TRADING
286 QUEZON STREET

ILOILO CITY

DUE YOUR FAILURE TO COMPLY WITH CONDITIONS BEFORE DEADLINE OUR CONTRACT FOR
PURCHASE SCRAP IRON CANCELLED.
VISAYAN SAWMILL CO., INC."

Hibionada wired back on May 24, 1983 the following:

"ANG TAY VISAYAN SAWMILL
DUMAGUETE CITY

LETTER OF CREDIT AMOUNTING P250,000.00 OPENED MAY 12, 1983 BANK OF PI MAIN OFFICE
AYALA AVENUE MAKATI METRO MANILA BUT TRANSMITTAL IS DELAYED PLEASE
CONSIDER REASON WILL PERSONALLY FOLLOWUP IN MANILA THANKS REGARDS

RAMON HIBIONADA"

On May 26, 1983, petitioner company received the following advice from the Dumaguete City Branch of The Bank of Philippine Islands:

"Opened today our Irrevocable Domestic Letter of Credit 2-01456-4 for P250,000.00 in favor ANG TAY c/o Visayan Sawmill Co., Inc. Dumaguete City Negros Oriental Account of ARMACO-MARSTEEL ALLOW (sic) CORPORATION 2nd Floor Alpap 1 Bldg., 140 Alfaro st. Salcedo Village Makati Metro Manila Shipments of about 500 MT of assorted steel scrap marine/heavy equipment expiring on July 23, 1983 without recourse at slight draft drawn on Armaco-Marsteel Alloy Corporation accompanied by the following documents: Certificate of acceptance by Armaco-Marsteel Allow (sic) Corporation shipment from Dumaguete City to buyer's warehouse partial shipment allowed/transshipment not allowed."

Subsequently, petitioners' counsel sent another telegram to private respondents stating that:

"VISAYAN SAWMILL COMPANY UNWILLING TO CONTINUE SALE OF SCRAP IRON TO HIBIONADA DUE TO NON COMPLIANCE WITH ESSENTIAL PRE CONDITIONS"

Consequently, private respondents filed a complaint for specific performance and damages with the Regional Trial Court (RTC) of Iloilo (Branch XXXV) which decided in favor of private respondents. The RTC decision having been affirmed by the Court of Appeals, the present petition was filed.

Finding the petition meritorious, the ponencia reversed the decision of the Court of Appeals. Based on its appreciation of the contract in question, it has arrived at the conclusion that herein contract is not a contract of sale but a contract to sell which is subject to a positive suspensive condition, i.e., the opening of a letter of credit by private respondents. Since the condition was not fulfilled, the obligation of petitioners to convey title did not arise. The lengthy decision of *Luzon Brokerage Co., Inc. v. Maritime Co., Inc.*[1], penned by Justice J.B.L. Reyes, was cited as authority on the assumption that subject contract is indeed a contract to sell but which will be shown herein as not quite accurate.

Evidently, the distinction between a contract to sell and a contract of sale is crucial in this case. Article 1458 of the Civil Code has this definition: "By a contract of sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing and the other to pay therefor a price certain in money or its equivalent."

Article 1475 gives the significance of this mutual undertaking of the parties, thus: "The 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. From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts."

Thus, when the parties entered into the contract entitled "Purchase and Sale of Scrap Iron" on May 1, 1983, the contract reached the stage of perfection, there being a meeting of the minds upon the object which is the subject matter of the contract and the price which is the consideration. Applying Article 1475 of the Civil Code, from that moment, the parties may reciprocally demand performance of the obligations incumbent upon them, i.e., delivery by the vendor and payment by the vendee.

Petitioner, in its petition, admits that "[b]efore the opening of the letter of credit, buyer Ramon Hibionada went to Mr. Ang Tay and informed him that the letter of credit was forthcoming and if it was possible for him (buyer) to start cutting and digging the scrap iron before the letter of credit arrives and the former (seller) manifested no objection, and he immediately sent 18 or 20 people to start the operation." [2]

From the time the seller gave access to the buyer to enter his premises, manifesting no objection thereto but even sending 18 or 20 people to start the operation, he has placed the goods in the control and possession of the vendee and delivery is effected. For according to Article 1497, "The thing sold shall be understood as delivered when it is placed in the control and possession of the vendee." [3]

Such action or real delivery (traditio) is the act that transfers ownership. Under Article 1496 of the Civil Code, "The ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in Articles 1497 to 1501, or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee."

That payment of the price in any form was not yet effected is immaterial to the transfer of the right of ownership. In a contract of sale, the non-payment of the price is a resolutory condition which extinguishes the transaction that, for a time, existed and discharges the obligations created thereunder. [4]

On the other hand, "the parties may stipulate that ownership in the thing shall not pass to the purchaser until he has fully paid the price." [5] In such a contract to sell, the full payment of the price is a positive suspensive condition, such that in the event of non-payment, the obligation of the seller to deliver and transfer ownership never arises. Stated differently, in a contract to sell, ownership is not transferred upon delivery of property but upon full payment of the purchase price. [6]

Consequently, in a contract of sale, after delivery of the object of the contract has been made, the seller loses ownership and cannot recover the same unless the contract is rescinded. But in the contract to sell, the seller retains ownership and the buyer's failure to pay cannot even be considered a breach, whether casual or substantial, but an event that prevented the seller's duty to transfer title to the object of the contract.

At the outset, it must be borne in mind that a provision in the contract regarding the mode of payment, like the requirement for the opening of the Letter of Credit in this case, is not among the essential requirements of a contract of sale enumerated in Articles 1305 [7] and 1474, [8] the absence of any of which will prevent the perfection of the contract from happening. Likewise, it must be emphasized that not every provision regarding

payment should automatically be classified as a suspensive condition. To do so would change the nature of most contracts of sale into contracts to sell. For a provision in the contract regarding the payment of the price to be considered a suspensive condition, the parties must have made this clear in certain and unambiguous terms, such as for instance, by reserving or withholding title to the goods until full payment by the buyer.[9] This was a pivotal circumstance in the Luzon Brokerage case where the contract in question was replete with very explicit provisions such as the following: "Title to the properties subject of this contract remains with the Vendor and shall pass to, and be transferred in the name of the Vendee only upon complete payment of the full price . . . ;"[10] "the Vendor (Myers) will execute and deliver to the Vendee a definite and absolute Deed of Sale upon full payment of the Vendee...;[11] and "should the Vendee fail to pay any of the monthly installments, when due, or otherwise fail to comply with any of the terms and conditions herein stipulated, then this Deed of Conditional Sale shall automatically and without any further formality, become null and void."[12]

It is apparent from a careful reading of Luzon Brokerage, as well as the cases which preceded it[13] and the subsequent ones applying its doctrines,[14] that the mere insertion of the price and the mode of payment among the terms and conditions of the agreement will not necessarily make it a contract to sell. The phrase in the contract "on the following terms and conditions" is standard form which is not to be construed as imposing a condition, whether suspensive or resolutive, in the sense of the happening of a future and uncertain event upon which an obligation is made to depend. There must be a manifest understanding that the agreement is in what may be referred to as "suspended animation" pending compliance with provisions regarding payment. The reservation of title to the object of the contract in the seller is one such manifestation. Hence, it has been decided in the case of *Dignos v. Court of Appeals*[15] that, absent a proviso in the contract that the title to the property is reserved in the vendor until full payment of the purchase price or a stipulation giving the vendor the right to unilaterally rescind the contract the moment the vendee fails to pay within the fixed period, the transaction is an absolute contract of sale and not a contract to sell.[16]

In the instant case, nowhere in the contract did it state that the petitioners reserve title to the goods until private respondents have opened a letter of credit. Nor is there any provision declaring the contract as without effect until after the fulfillment of the condition regarding the opening of the letter of credit.

Examining the contemporaneous and subsequent conduct of the parties, which may be relevant in the determination of the nature and meaning of the contract,[17] it is significant that in the telegram sent by petitioners to Hibionada on May 23, 1983, it stated that "DUE [TO] YOUR FAILURE TO COMPLY WITH CONDITIONS BEFORE DEADLINE OUR CONTRACT FOR PURCHASE SCRAP IRON CANCELLED." And in some of the pleadings in the course of this litigation, petitioners referred to the transaction as a contract of sale.[18]

In light of the provisions of the contract, the contemporaneous and subsequent acts of the parties and the other relevant circumstances surrounding the case, it is evident that the stipulation for the buyer to open a Letter of Credit in order to cover the payment of the purchase price does not bear the marks of a suspensive condition. The agreement between the parties was a contract of sale and the "terms and conditions" embodied therein which are standard form, are clearly resolutive in nature, the breach of which may give either party the option to bring an action to rescind and/or seek damages. Contrary to the conclusions arrived at in the ponencia, the transaction is not a contract to sell but a contract of sale.

However, the determination of the nature of the contract does not settle the controversy. A breach of the contract was committed and the rights and liabilities of the parties must be established. The ponencia, notwithstanding its conclusion that no contract of sale existed, proceeded to state that petitioner company may rescind the contract based on Article 1597 of the Civil Code which expressly applies only to a contract of sale. It provides:

"ART. 1597. Where the goods have not been delivered to the buyer, and the buyer has repudiated the contract of sale, or has manifested his inability to perform his obligations, thereunder, or has committed a breach thereof, the seller may totally rescind the contract of sale by giving notice of his election so to do to the buyer."
(Underscoring supplied)

The ponencia was then confronted with the issue of delivery since Article 1597 applies only "[w]here the goods have not yet been delivered." In this case, as aforesaid, the workers of private respondents were actually allowed to enter the petitioners' premises, thus, giving them control and possession of the goods. At this juncture, it is even unnecessary to discuss the issue of delivery in relation to the right of rescission nor to rely on Article 1597. In every contract which contains reciprocal obligations, the right to rescind is always implied under Article 1191 of the Civil Code in case one of the parties fails to comply with his obligations.[19]

The right to rescind pursuant to Article 1191 is not absolute. Rescission will not be permitted for slight or casual breach of the contract.[20] Here, petitioners claim that the breach is so substantial as to justify rescission, not only because the Letter of Credit was not opened on May 15, 1983 as stipulated in the contract but also because of the following factors: (1) the Letter of Credit, although opened in favor of petitioners was made against the account of a certain Marsteel Alloy Corporation, instead of private respondent's account; (2) the Letter of Credit referred to "assorted steel scrap" instead of "scrap iron and junk" as provided in the contract; (3) the Letter of Credit placed the quantity of the goods at "500 MT" while the contract mentioned "an undetermined quantity of scrap iron and junk"; (4) no amount from the Letter of Credit will be released unless accompanied by a Certificate of Acceptance; and (5) the Letter of Credit had an expiry date.

I am not convinced that the above circumstances may be characterized as so substantial and fundamental as to defeat the object of the parties in making the agreement.[21] None of the alleged defects in the Letter of Credit would serve to defeat the object of the parties. It is to be stressed that the purpose of the opening of a Letter of Credit is to effect payment. The above-mentioned factors could not have prevented such payment. It is also significant to note that petitioners sent a telegram to private respondents on May 23, 1983 cancelling the contract. This was before they had even received on May 26, 1983 the notice from the bank about the opening of the Letter of Credit. How could they have made a judgment on the materiality of the provisions of the Letter of Credit for purposes of rescinding the contract even before setting eyes on said document?

To be sure, in the contract, the private respondents were supposed to open the Letter of Credit on May 15, 1983 but, it was not until May 26, 1983 or eleven (11) days later that they did so. Is the eleven-day delay a substantial breach of the contract as would justify the rescission of the contract?

In *Song Fo and Co. v. Hawaiian-Philippine Co.*[22], it was held that a delay in payment for twenty (20) days was not a violation of an essential condition of the contract which would warrant rescission for non-performance. In the instant case, the contract is bereft of any suggestion that time was of the essence. On the contrary, it is noted that petitioners allowed private respondents' men to dig and remove the scrap iron located in petitioners' premises between May 17, 1983 until May 30, 1983 or beyond the May 15, 1983 deadline for the opening of the Letter of Credit. Hence, in the absence of any indication that the time was of the essence, the eleven-day delay must be deemed a casual breach which cannot justify a rescission.

Worthy of mention before concluding is *Sycip v. National Coconut Corporation, et al.*[23] since, like this case, it involves a failure to open on time the Letter of Credit required by the seller. In *Sycip*, after the buyer offered to buy 2,000 tons of copra, the seller sent a telegram dated December 19, 1946 to the buyer accepting the offer but on condition that the latter opens a Letter of Credit within 48 hours. It was not until December 26, 1946, however, that the Letter of Credit was opened. The Court, speaking through Justice Bengzon, held that because of the delay in the opening of the Letter of Credit the seller was not obliged to deliver the goods.

Two factors distinguish Sycip from the case at bar. First, while there has already been a perfected contract of sale in the instant case, the parties in Sycip were still undergoing the negotiation process. The seller's qualified acceptance in Sycip served as a counter offer which prevented the contract from being perfected. Only an absolute and unqualified acceptance of a definite offer manifests the consent necessary to perfect a contract.[24] Second, the Court found in Sycip that time was of the essence for the seller who was anxious to sell to other buyers should the offeror fail to open the Letter of Credit within the stipulated time. In contrast, there are no indicia in this case that can lead one to conclude that time was of the essence for petitioner as would make the eleven-day delay a fundamental breach of the contract.

In sum, to my mind, both the trial court and the respondent Court of Appeals committed no reversible error in their appreciation of the agreement in question as a contract of sale and not a contract to sell, as well as holding that the breach of the contract was not substantial and therefore, petitioners were not justified in law in rescinding the agreement.

PREMISES CONSIDERED, the Petition must be DISMISSED and the decision of the Court of Appeals AFFIRMED.

[1] G.R. No. L-25885, August 18, 1972, 46 SCRA 381. Hereinafter referred to as Luzon Brokerage case.

[2] Rollo, p. 10; (Underscoring supplied).

[3] Art. 1497, Civil Code.

[4] Hanlon v. Haussermann, 40 Phil. 796 (1920).

[5] Art. 1478, Civil Code.

[6] Caridad Estates, Inc. v. Santero, 71 Phil. 114 (1940); Manuel v. Rodriguez, 109 Phil. 1 (1960).

[7] Article 1305 of the Civil Code provides:

"A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service."

[8] Article 1475, paragraph 1 of the Civil Code Provides:

"The 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."

[9] Lim v. Court of Appeals, G.R. No. 85733, February 23, 1990, 182 SCRA 564.

[10] Supra, note 1 at 386.

[11] Id., at 387.

[12] Id., at 386.

[13] Caridad Estates, Inc. v. Santero, supra, note 3; Manuel v. Rodriguez, supra, note 3.

[14] Lim v. Court of Appeals, G.R. No. 85733, February 23, 1990, 182 SCRA 564; Alfonso v. Court of Appeals, G.R. No. 63745, June 8, 1990, 186 SCRA 400.

[15] G.R. No. L-59266, February 29, 1988, 158 SCRA 375.

[16] See also Taguba v. Vda., de Leon, G.R. No. L-59980, October 23, 1984, 132 SCRA 722.

[17] Javier v. Court of Appeals, G.R. No. 48194, March 15, 1990, 183 SCRA 171; Universal Textile Mills, Inc. v. NLRC, G.R. No. 87245, April 6, 1990, 184 SCRA 273.

[18] Petition, p. 4, Rollo, P. 7; Reply, p. 4, Rollo, p. 107.

[19] University of the Philippines v. de los Angeles, G.R. No. L--28602, September 29, 1970, 35 SCRA 102; Siy v. Court of Appeals, et al., G.R. No. L-39778, September 13, 1985, 138 SCRA 536; Lim v. Court of Appeals, G.R. No. 85733, February 23, 1990, 182 SCRA 564.

[20] Taguba v. de Leon, G.R. No. L-59980, October 23, 1984, 132 SCRA 722; Angeles v. Calasanz, G.R. No. L-42283, March 18, 1985, 135 SCRA 323; Tan v. Court of Appeals, G.R. No. 80479, July 28, 1989, 175 SCRA 656; Jimenez v. Court of Appeals, G.R. No. 92171, March 13, 1991, 195 SCRA 205.

[21] Delta Motor Corporation v. Genuino, G.R. No. 55665, February 8, 1989, 170 SCRA 29; Ang v. Court of Appeals, G.R. No. 80058, February 13, 1989, 170 SCRA 286.

[22] 47 Phil. 821 (1925).

[23] G.R. No. L-6618, April 28, 1956 (Unreported).

[24] Article 1319, Civil Code; Weldon Construction Corporation v. Court of Appeals, G.R. No. L-35721, October 12, 1987, 154 SCRA 618.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.