

THIRD DIVISION

[G.R. NO. 143788, September 09, 2005]

DANFOSS, INC., PETITIONER, VS. CONTINENTAL CEMENT CORPORATION, RESPONDENT.

DECISION

CORONA, J.

This is a petition for review on certiorari under Rule 45 of the 1997 Rules on Civil Procedure of the February 11, 2000 decision^[1] of the Court of Appeals in CA-G.R. No. SP-55645, and its resolution dated June 7, 2000 denying petitioner's motion for reconsideration.

The antecedents show that on November 5, 1998, respondent Continental Cement Corporation (CCC) filed a complaint for damages against petitioner DANFOSS and Mechatronics Instruments and Controls, Inc. (MINCI) before the Regional Trial Court of Quezon City, Branch 80, alleging that:

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6. On 1 September 1997, Plaintiff CCC purchased from defendant MINCI two (2) unit 132 KW Danfoss Brand Frequency Converter/Inverter for use in the Finish Mill of its Cement Plant located in Barrio Bigte, Norzagaray, Bulacan. The said purchase is covered by a Purchase [Order] (PO) No. 36625....

- 6.1 Under the terms and conditions of the purchase order, the delivery of the two (2) unit Frequency Converter are to be delivered within eight (8) to ten (10) weeks from the opening of the letter of credit;

7. Defendant MINCI, immediately relayed the purchase order of plaintiff CCC to the other defendant DANFOSS, represented by Messrs. Klaus Stove and Hans Vigaard, who in turn forwarded the same to their Asian Regional Office in Singapore and Head Office in Denmark for the shipment of the orders to the Philippines.

- 7.1 Defendant DANFOSS' commitment to deliver the two (2) unit Danfoss Brand Frequency Converter/Inverter to plaintiff CCC was relayed by defendant MINCI to CCC upon the assurance of Messrs. Stove and Vigaard of DANFOSS.

8. On September 1997, plaintiff CCC received the pro-forma invoice of defendant MINCI through fax transmission dated 2 September

1998, indicating the mode of payment through irrevocable letter of credit in favor of Danfoss Industries Pte. Ltd. ...

8.1 Plaintiff CCC executed and opened a letter of credit under LC No. 970884 in favor of DANFOSS INDUSTRIES PTE. LTD., with address at 6 Jalan Pesawat, Singapore 619364, which is the Asian Regional Office of defendant DANFOSS ...

9. Defendant MINCI informed plaintiff CCC through fax transmission dated 17 September 1997, that the two (2) unit Frequency Converter/Inverter are ready for shipment, and at the same time requested for the amendments of the letter of credit changing the port of origin/loading from Singapore to Denmark....

9.1 In compliance, plaintiff CCC amended the letter of credit changing the port of origin from Singapore to Denmark....

10. On 6 November 1997, defendant MINCI informed plaintiff CCC that Danfoss Industries Pte. Ltd. was still checking the status of the shipment of the two (2) unit Frequency Converter/Inverter with Danfoss Denmark.

10.1 In reply, plaintiff CCC through a letter dated 7 November 1997, reiterated its demand that every delay in the shipment of the two (2) unit Frequency Converter/Inverter will cause substantial losses in its operations and requested for the early work out and the immediate shipment of the frequency converter to avoid further loss to the company....

11. However, on 9 November 1997, defendant DANFOSS, informed the other defendant MINCI through fax transmission, copy furnished plaintiff CCC, that the reason why DANFOSS has delivery problems was that some of the supplied components for the new VLT 5000 series did not meet the agreed quality standard. That means that their factory was canvassing for another supplier. And at that moment, there was no clear message when normal production will resume....

12. Due to this information received, plaintiff CCC surmised that defendants MINCI and DANFOSS could not be able to deliver the two (2) unit Frequency Converter within the maximum period of ten (10) weeks period from the opening of the Letter of Credit, as one of the conditions in the Purchase Order dated 1 September 1997.

12.1 Thereafter, no definite commitment was received by plaintiff CCC from defendants MINCI and DANFOSS for the delivery of the two (2) unit Frequency Converter.

13. By reason of the delay of the defendants MINCI and DANFOSS to deliver the two (2) unit Frequency Converter/Inverter under PO No. 36625, plaintiff CCC, through its Purchasing Manager, informed defendant MINCI in a letter dated 13 November 1997, of the plaintiff's intention to cancel the said order...

13.1 As a consequence thereof, plaintiff CCC has suffered an actual substantial production losses in the amount of Eight Million Sixty-four Thousand Pesos (P8,064,000.00) due to the time lost and delay in the delivery of the said two (2) unit Frequency Converter/Inverter. Likewise, plaintiff CCC was compelled to look for another supplier.

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On February 17, 1999, petitioner DANFOSS filed a motion to dismiss the complaint on the ground that it did not state a cause of action:

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The above allegations of the complaint clearly establish the following key constitutive facts:

1. Defendant's period of delivery is from 8 to 10 weeks from the opening of the letter of credit on September 9, 1997 or until November 19, 1997.
2. Defendant Danfoss, although having problems with its supplier during the period prior to defendant's cancellation, nevertheless, plaintiff never alleged that Danfoss Denmark cannot perform its obligation to deliver by the 10th week or on November 20, 1997. Admittedly, plaintiff only surmised that defendant Danfoss could not deliver.
3. Before the period for delivery has expired on November 19, 1997, the plaintiff cancelled its order on November 13, 1997. The cancellation took place seven (7) days before the expiry of the defendant's obligation to deliver on November 19, 1997.
4. Neither plaintiff nor defendant Danfoss changed the date of delivery, what plaintiff changed in the letter of credit was only the port of origin/loading from Singapore to Denmark. The period of delivery as stipulated in the pro forma invoice issued by defendant MINCI remained intact, that is for a period of 6 to 10 weeks from the opening of the letter of credit on September 9, 1997 or until November 19, 1997 was still in force when the plaintiff cancelled its order on November 13, 1997. Defendant Danfoss has not incurred in delay and has 7 days more within which to make delivery. Plaintiff, having cancelled the order on November 13, 1997 before the expiry of defendant Danfoss' delivery commitment, defendant

Danfoss's principal could not have been in default.

5. Plaintiff never made an extrajudicial demand for the delivery of two (2) units Frequency Converter on its due date. On the contrary, as above alleged, plaintiff cancelled its order on November 13, 1997.
6. Plaintiff's claim for damages could not have accrued until after defendant incurred in delay.

The above allegations neither prove any right of the plaintiffs arising from the transactions nor a violation of such right. It is submitted that this Honorable Court based on the complaint, cannot render a valid judgment against the defendant Danfoss. The plaintiff's cause of action against Danfoss or plaintiff's right to demand delivery cannot arise earlier than November 19, 1997, which is the last day for the defendant Danfoss's principal (Danfoss Denmark) to deliver the two (2) units Frequency Converter. As admitted by the plaintiff, it cancelled its order on November 13, 1997, or six (6) days before the expiry of the defendant's obligation to deliver. Indeed, defendant Danfoss's obligation to deliver is not yet demandable. The period of 8 to 10 weeks for the delivery of plaintiff's purchase order of two (2) units Frequency Converter was established for the benefit of both the plaintiff and the defendant Danfoss. As such, plaintiff cannot demand delivery before the period stipulated....

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From the allegations of the complaint, there is also no clear and categorical demand for the fulfillment of the plaintiff's obligation to deliver by the 10th week or on November 19, 1997.

WHEREFORE, it is respectfully prayed of this Honorable Court that the Complaint be dismissed for failure to state a cause of action.^[3]

The court *a quo* denied the motion to dismiss in its order^[4] dated May 28, 1999, holding that:

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In the Court's opinion, the issue of whether or not the defendants incur delay in the delivery of the equipment in question within the period stipulated is a debatable question which necessitates actual trial on the merits where the parties have to adduce evidence in support of their respective stance.

While the defendants contend that the stipulated period of delivery had not lapsed yet when the plaintiff cancelled its order of the two equipments in question as the cancellation took place seven (7) days before the expiry date of the defendants' obligation to deliver, the plaintiff's position is that the acts of the defendants had made compliance with their obligation to deliver within the period stipulated, impossible, hence, there was no need for a demand as the law provides that "when demand would be useless, as when the obligor has rendered it beyond his power to perform." The plaintiff's contention if properly and