

THIRD DIVISION

[G.R. No. 178008, October 09, 2013]

**SAN FERNANDO REGALA TRADING, INC., PETITIONER, VS.
CARGILL PHILIPPINES, INC., RESPONDENT.**

[G.R. No. 178042]

**CARGILL PHILIPPINES, INC., PETITIONER, VS. SAN FERNANDO
REGALA TRADING, INC., RESPONDENT.**

DECISION

ABAD, J.:

These cases pertain to the reciprocal obligations of the parties in a contract of sale to deliver the goods, receive them, and pay the price as stipulated and the consequent effects of breach of such obligations.

The Facts and the Case

Cargill Philippines, Inc. (Cargill) and San Fernando Regala Trading, Inc. (San Fernando) were cane molasses traders that did business with each other for sometime. The present controversy arose when San Fernando claimed that Cargill reneged on its contractual obligations to deliver certain quantities of molasses. Cargill denied this, insisting that San Fernando actually refused to accept the delivery of the goods. This enmity resulted in Cargill's filing on March 2, 1998 a complaint for sum of money and damages against San Fernando before the Regional Trial Court (RTC) of Makati City in Civil Case 98-493.

Cargill alleged that on July 15, 1996 it entered into Contract 5026^[1] covering its sale to San Fernando of 4,000 metric tons (mt) of molasses at the price of P3,950.00 per mt. Cargill agreed to deliver the molasses within the months of "April to May 1997" at the wharf of Union Ajinomoto, Inc. (Ajinomoto) along the Pasig River, Metro Manila. This was a risk-taking forward sale in that its execution was to take place about 10 months later when the parties did not yet know what the trading price of molasses would be.

Shortly after, Cargill also entered into Contract 5047^[2] covering another sale to San Fernando of 5,000 mt of molasses at P2,750.00 per mt. The delivery period under this contract was within "October-November-December 1996," sooner than the delivery period under Contract 5026. Apparently, San Fernando had a deal with Ajinomoto for the supply of these molasses.

Cargill further alleged that it offered to deliver the 4,000 mt of molasses as required by Contract 5026 within the months of April and May 1997 but San Fernando accepted only 951 mt, refusing to accept the rest. On April 2, 1997 Dolman V, the

barge carrying Cargill's 1,174 mt of molasses, arrived at the Ajinomoto wharf but San Fernando refused to accept the same. The barge stayed at the wharf for 71 days, waiting for San Fernando's unloading order. Because of the delay, the owner of the barge slapped Cargill with demurrage amounting to P920,000.00. Cargill also suffered P3,480,000.00 in damages by way of unrealized profits because it had to sell the cargo to another buyer at a loss.

Cargill further alleged that it earlier sought to deliver the molasses covered by Contract 5047 at the Ajinomoto wharf in the months of October, November, and December 1996, but San Fernando failed or refused for unjustified reasons to accept the delivery. Consequently, Cargill suffered damages by way of unrealized profits of P360,000.00 from this contract. Apart from asking the RTC for awards of unrealized profits, Cargill also asked for a return of the demurrage it paid, attorney's fees, and cost of litigation.

To substantiate its claim, Cargill presented David Mozo of Dolman Transport Corp. who testified that Cargill chartered its Dolman V barge to carry molasses from Pasacao to the Ajinomoto wharf in Pasig. But the barge was unable to unload its cargo and was placed on stand-by for around 70 days, awaiting orders to unload its molasses. Consequently, Dolman Transport charged Cargill for demurrage.

Cargill also presented Arthur Gunlao, an employee, who testified that his company was unable to unload the molasses covered by Contracts 5026 and 5047 because San Fernando's President, Quirino Kehyeng, advised them to wait because Ajinomoto's storage tanks were still full and could not receive the molasses. Because of the prolonged delay in the unloading of the goods, Cargill had no choice but to sell the molasses to another buyer. At the prodding of Kehyeng, Cargill wrote San Fernando on May 14, 1997 proposing changes in the delivery periods of Contract 5026 and 5047, respectively from "April to May 1997" to "May to June 1997" and from "October-November-December 1996" to "May-June-July 1997."^[3] The amendments were needed to keep the contracts valid and maintain the good business relations between the two companies.

In its Answer with counterclaim, San Fernando pointed out that, except for the 951 mt of molasses that Cargill delivered in March 1997, the latter made no further deliveries for Contract 5026. Indeed, Cargill sent San Fernando a letter dated May 14, 1997 proposing a change in the delivery period for that contract from "April to May 1997" to "May to June 1997." But San Fernando rejected the change since it had a contract to sell the molasses to Ajinomoto for P5,300.00 per mt.^[4] San Fernando expected to earn a P5,400,000.00 profit out of Contract 5026.

As for Contract 5047, San Fernando maintained that Cargill delivered no amount of molasses in connection with the same. Cargill admitted its inability to deliver the goods when it wrote San Fernando a letter on May 14, 1997, proposing to move the delivery period from "October-November-December 1996" to "May-June-July 1997." But San Fernando also rejected the change since it had already contracted to sell the subject molasses to Ajinomoto for P4,950.00 per mt.^[5] San Fernando expected a profit of P11,000,000.00 under this contract.

To prove its claims, San Fernando presented its President, Kehyeng, who testified that apart from the March 1997 delivery of 951 mt of molasses under Contract

5026, Cargill made no further deliveries. He called Dennis Seah of Cargill several times demanding delivery but nothing came of it. Subsequently, Cargill wrote San Fernando, proposing the extension of the delivery periods provided in their two contracts. But Kehyeng rejected the proposal and refused to sign his conformity at the appropriate spaces on Cargill's letter.

Kehyeng denied that San Fernando had refused to receive deliveries because it bought molasses from Cargill at prices higher than what Ajinomoto was willing to pay. Kehyeng insisted that San Fernando had always received Cargill's deliveries even on occasions when the prices fluctuated resulting in losses to his company. He claimed that, as a result of Cargill's violation of Contracts 5026 and 5047, San Fernando was entitled to rescission and awards for unrealized profits of P4,115,329.20 and P11,000,000.00, respectively, moral and exemplary damages each in the amount of P500,000.00, attorney's fees of P1,000,000.00, and litigation expenses.

On December 23, 2003 the RTC dismissed Cargill's complaint for lack of merit and granted San Fernando's counterclaims. The RTC did not give credence to Cargill's claim that San Fernando refused to accept the deliveries of molasses because Ajinomoto's tanks were full. San Fernando sufficiently proved that Ajinomoto continued receiving molasses from other suppliers during the entire time that Cargill's chartered barge was put on stand-by at the wharf, supposedly waiting for San Fernando's unloading orders.

It was incomprehensible, said the RTC, for San Fernando to refuse Cargill's deliveries, considering that Ajinomoto had already agreed to buy the molasses from it. Cargill's failure to make the required deliveries resulted in San Fernando's default on its obligations to Ajinomoto, prompting the latter to cancel its orders. As a result, San Fernando lost expected profits of P4,115,329.20 representing the remaining undelivered molasses under Contract 5026 and P11,000,000.00 under Contract 5047. The RTC awarded San Fernando its claims for unrealized profits, P500,000.00 in moral damages, another P500,000.00 in exemplary damages, attorney's fees of P1,000,000.00, and P500,000.00 as cost of litigation.

The Court of Appeals (CA) ruled on appeal, however, that Cargill was not entirely in breach of Contract 5026. Cargill made an advance delivery of 951 mt in March 1997. It then actually sent a barge containing 1,174 mt of molasses on April 2, 1997 for delivery at Ajinomoto's wharf but San Fernando refused to have the cargo unloaded. Consequently, the trial court erred in awarding San Fernando unrealized profits of P4,115,329.20 under Contract 5026. The CA also ruled that since San Fernando unjustifiably refused to accept the April 2, 1997 delivery, it should reimburse Cargill the P892,732.50 demurrage that it paid the owner of the barge.

The CA, however, found Cargill guilty of breach of Contract 5047 which called for delivery of the molasses in "October-November-December 1996." Since San Fernando did not accede to Cargill's request to move the delivery period back, Cargill violated the contract when it did not deliver the goods during the previously agreed period. Cargill was liable to San Fernando for unrealized profits of P11,000,000.00 that it would have made if it had sold them to Ajinomoto. The CA deleted the award of moral and exemplary damages in favor of San Fernando for its failure to sufficiently establish Cargill's bad faith in complying with its obligations. The CA also deleted the awards of attorney's fees and cost of litigation.