

SECOND DIVISION

[G.R. No. 145483, November 19, 2004]

**LORENZO SHIPPING CORP., PETITIONER, VS. BJ MARTHEL
INTERNATIONAL, INC., RESPONDENT.**

DECISION

CHICO-NAZARIO, J.:

This is a petition for review seeking to set aside the Decision^[1] of the Court of Appeals in CA-G.R. CV No. 54334 and its Resolution denying petitioner's motion for reconsideration.

The factual antecedents of this case are as follows:

Petitioner Lorenzo Shipping Corporation is a domestic corporation engaged in coastwise shipping. It used to own the cargo vessel M/V Dadiangas Express.

Upon the other hand, respondent BJ Marthel International, Inc. is a business entity engaged in trading, marketing, and selling of various industrial commodities. It is also an importer and distributor of different brands of engines and spare parts.

From 1987 up to the institution of this case, respondent supplied petitioner with spare parts for the latter's marine engines. Sometime in 1989, petitioner asked respondent for a quotation for various machine parts. Acceding to this request, respondent furnished petitioner with a formal quotation,^[2] thus:

May 31, 1989
MINQ-6093

LORENZO SHIPPING LINES
Pier 8, North Harbor
Manila

SUBJECT: PARTS FOR ENGINE MODEL
MITSUBISHI 6UET 52/60

Dear Mr. Go:

We are pleased to submit our offer for your above subject requirements.

<u>Description</u>	<u>Qty.</u>	<u>Unit Price</u>	<u>Total Price</u>
Nozzle Tip	6 pcs.	P 5,520.00	33,120.00
Plunger & Barrel	6 pcs.	27,630.00	165,780.00

Cylinder Head	2 pcs.	1,035,000.00	2,070,000.00
Cylinder Liner	1 set		<u>477,000.00</u>
		TOTAL PRICE FOB	
P2,745,900.00			
MANILA			

DELIVERY: Within 2 months after receipt of firm order.

TERMS: 25% upon delivery, balance payable in 5 bi-monthly equal
Installment[s] not to exceed 90 days.

We trust you find our above offer acceptable and look forward to your
most valued order.

Very truly yours,

(SGD) HENRY

PAJARILLO

Sales

Manager

Petitioner thereafter issued to respondent Purchase Order No. 13839,^[3] dated 02 November 1989, for the procurement of one set of cylinder liner, valued at P477,000, to be used for M/V Dadiangas Express. The purchase order was co-signed by Jose Go, Jr., petitioner's vice-president, and Henry Pajarillo. Quoted hereunder is the pertinent portion of the purchase order:

<u>Name of Description</u>	<u>Qty.</u>	<u>Amount</u>
CYL. LINER M/E	1 SET	P477,000.00

NOTHING FOLLOW

INV. #

TERM OF PAYMENT: 25% DOWN PAYMENT

5 BI-MONTHLY INSTALLMENT[S]

Instead of paying the 25% down payment for the first cylinder liner, petitioner issued in favor of respondent ten postdated checks^[4] to be drawn against the former's account with Allied Banking Corporation. The checks were supposed to represent the full payment of the aforementioned cylinder liner.

Subsequently, petitioner issued Purchase Order No. 14011,^[5] dated 15 January 1990, for yet another unit of cylinder liner. This purchase order stated the term of payment to be "25% upon delivery, balance payable in 5 bi-monthly equal installment[s]."^[6] Like the purchase order of 02 November 1989, the second purchase order did not state the date of the cylinder liner's delivery.

On 26 January 1990, respondent deposited petitioner's check that was postdated 18 January 1990, however, the same was dishonored by the drawee bank due to insufficiency of funds. The remaining nine postdated checks were eventually returned by respondent to petitioner.

The parties presented disparate accounts of what happened to the check which was previously dishonored. Petitioner claimed that it replaced said check with a good one, the proceeds of which were applied to its other obligation to respondent. For its part, respondent insisted that it returned said postdated check to petitioner.

Respondent thereafter placed the order for the two cylinder liners with its principal in Japan, Daiei Sangyo Co. Ltd., by opening a letter of credit on 23 February 1990 under its own name with the First Interstate Bank of Tokyo.

On 20 April 1990, Pajarillo delivered the two cylinder liners at petitioner's warehouse in North Harbor, Manila. The sales invoices^[7] evidencing the delivery of the cylinder liners both contain the notation "subject to verification" under which the signature of Eric Go, petitioner's warehouseman, appeared.

Respondent thereafter sent a Statement of Account dated 15 November 1990^[8] to petitioner. While the other items listed in said statement of account were fully paid by petitioner, the two cylinder liners delivered to petitioner on 20 April 1990 remained unsettled. Consequently, Mr. Alejandro Kanaan, Jr., respondent's vice-president, sent a demand letter dated 02 January 1991^[9] to petitioner requiring the latter to pay the value of the cylinder liners subjects of this case. Instead of heeding the demand of respondent for the full payment of the value of the cylinder liners, petitioner sent the former a letter dated 12 March 1991^[10] offering to pay only P150,000 for the cylinder liners. In said letter, petitioner claimed that as the cylinder liners were delivered late and due to the scrapping of the M/V Dadiangas Express, it (petitioner) would have to sell the cylinder liners in Singapore and pay the balance from the proceeds of said sale.

Shortly thereafter, another demand letter dated 27 March 1991^[11] was furnished petitioner by respondent's counsel requiring the former to settle its obligation to respondent together with accrued interest and attorney's fees.

Due to the failure of the parties to settle the matter, respondent filed an action for sum of money and damages before the Regional Trial Court (RTC) of Makati City. In its complaint,^[12] respondent (plaintiff below) alleged that despite its repeated oral and written demands, petitioner obstinately refused to settle its obligations. Respondent prayed that petitioner be ordered to pay for the value of the cylinder liners plus accrued interest of P111,300 as of May 1991 and additional interest of 14% per annum to be reckoned from June 1991 until the full payment of the principal; attorney's fees; costs of suits; exemplary damages; actual damages; and compensatory damages.

On 25 July 1991, and prior to the filing of a responsive pleading, respondent filed an amended complaint with preliminary attachment pursuant to Sections 2 and 3, Rule 57 of the then Rules of Court.^[13] Aside from the prayer for the issuance of writ of preliminary attachment, the amendments also pertained to the issuance by petitioner of the postdated checks and the amounts of damages claimed.

In an Order dated 25 July 1991,^[14] the court *a quo* granted respondent's prayer for the issuance of a preliminary attachment. On 09 August 1991, petitioner filed an Urgent Ex-Parte Motion to Discharge Writ of Attachment^[15] attaching thereto a

counter-bond as required by the Rules of Court. On even date, the trial court issued an Order^[16] lifting the levy on petitioner's properties and the garnishment of its bank accounts.

Petitioner afterwards filed its Answer^[17] alleging therein that time was of the essence in the delivery of the cylinder liners and that the delivery on 20 April 1990 of said items was late as respondent committed to deliver said items "within two (2) months after receipt of firm order"^[18] from petitioner. Petitioner likewise sought counterclaims for moral damages, exemplary damages, attorney's fees plus appearance fees, and expenses of litigation.

Subsequently, respondent filed a Second Amended Complaint with Preliminary Attachment dated 25 October 1991.^[19] The amendment introduced dealt solely with the number of postdated checks issued by petitioner as full payment for the first cylinder liner it ordered from respondent. Whereas in the first amended complaint, only nine postdated checks were involved, in its second amended complaint, respondent claimed that petitioner actually issued ten postdated checks. Despite the opposition by petitioner, the trial court admitted respondent's Second Amended Complaint with Preliminary Attachment.^[20]

Prior to the commencement of trial, petitioner filed a Motion (For Leave To Sell Cylinder Liners)^[21] alleging therein that "[w]ith the passage of time and with no definite end in sight to the present litigation, the cylinder liners run the risk of obsolescence and deterioration"^[22] to the prejudice of the parties to this case. Thus, petitioner prayed that it be allowed to sell the cylinder liners at the best possible price and to place the proceeds of said sale in escrow. This motion, unopposed by respondent, was granted by the trial court through the Order of 17 March 1991.^[23]

After trial, the court *a quo* dismissed the action, the decretal portion of the Decision stating:

WHEREFORE, the complaint is hereby dismissed, with costs against the plaintiff, which is ordered to pay P50,000.00 to the defendant as and by way of attorney's fees.^[24]

The trial court held respondent bound to the quotation it submitted to petitioner particularly with respect to the terms of payment and delivery of the cylinder liners. It also declared that respondent had agreed to the cancellation of the contract of sale when it returned the postdated checks issued by petitioner. Respondent's counterclaims for moral, exemplary, and compensatory damages were dismissed for insufficiency of evidence.

Respondent moved for the reconsideration of the trial court's Decision but the motion was denied for lack of merit.^[25]

Aggrieved by the findings of the trial court, respondent filed an appeal with the Court of Appeals^[26] which reversed and set aside the Decision of the court *a quo*. The appellate court brushed aside petitioner's claim that time was of the essence in the contract of sale between the parties herein considering the fact that a significant

period of time had lapsed between respondent's offer and the issuance by petitioner of its purchase orders. The dispositive portion of the Decision of the appellate court states:

WHEREFORE, the decision of the lower court is REVERSED and SET ASIDE. The appellee is hereby ORDERED to pay the appellant the amount of P954,000.00, and accrued interest computed at 14% per annum reckoned from May, 1991.^[27]

The Court of Appeals also held that respondent could not have incurred delay in the delivery of cylinder liners as no demand, judicial or extrajudicial, was made by respondent upon petitioner in contravention of the express provision of Article 1169 of the Civil Code which provides:

Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

Likewise, the appellate court concluded that there was no evidence of the alleged cancellation of orders by petitioner and that the delivery of the cylinder liners on 20 April 1990 was reasonable under the circumstances.

On 22 May 2000, petitioner filed a motion for reconsideration of the Decision of the Court of Appeals but this was denied through the resolution of 06 October 2000.^[28] Hence, this petition for review which basically raises the issues of whether or not respondent incurred delay in performing its obligation under the contract of sale and whether or not said contract was validly rescinded by petitioner.

That a contract of sale was entered into by the parties is not disputed. Petitioner, however, maintains that its obligation to pay fully the purchase price was extinguished because the adverted contract was validly terminated due to respondent's failure to deliver the cylinder liners within the two-month period stated in the formal quotation dated 31 May 1989.

The threshold question, then, is: Was there late delivery of the subjects of the contract of sale to justify petitioner to disregard the terms of the contract considering that time was of the essence thereof?

In determining whether time is of the essence in a contract, the ultimate criterion is the actual or apparent intention of the parties and before time may be so regarded by a court, *there must be a sufficient manifestation, either in the contract itself or the surrounding circumstances of that intention.*^[29] Petitioner insists that although its purchase orders did not specify the dates when the cylinder liners were supposed to be delivered, nevertheless, respondent should abide by the term of delivery appearing on the quotation it submitted to petitioner.^[30] Petitioner theorizes that the quotation embodied the offer from respondent while the purchase order represented its (petitioner's) acceptance of the proposed terms of the contract of sale.^[31] Thus, petitioner is of the view that these two documents "cannot be taken separately as if there were two distinct contracts."^[32] We do not agree.

It is a cardinal rule in interpretation of contracts that if the terms thereof are clear and leave no doubt as to the intention of the contracting parties, the literal meaning