

SECOND DIVISION

[G.R. No. 128066, June 19, 2000]

**JARDINE DAVIES INC., PETITIONER, VS. COURT OF APPEALS
AND FAR EAST MILLS SUPPLY CORPORATION, RESPONDENTS.**

[G.R. No. 128069]

**PURE FOODS CORPORATION, PETITIONER, VS. COURT OF
APPEALS AND FAR EAST MILLS SUPPLY CORPORATION,
RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

This is rather a simple case for specific performance with damages which could have been resolved through mediation and conciliation during its infancy stage had the parties been earnest in expediting the disposal of this case. They opted however to resort to full court proceedings and denied themselves the benefits of alternative dispute resolution, thus making the process more arduous and long-drawn.

The controversy started in 1992 at the height of the power crisis which the country was then experiencing. To remedy and curtail further losses due to the series of power failures, petitioner PURE FOODS CORPORATION (hereafter PUREFOODS) decided to install two (2) 1500 KW generators in its food processing plant in San Roque, Marikina City.

Sometime in November 1992 a bidding for the supply and installation of the generators was held. Several suppliers and dealers were invited to attend a pre-bidding conference to discuss the conditions, propose scheme and specifications that would best suit the needs of PUREFOODS. Out of the eight (8) prospective bidders who attended the pre-bidding conference, only three (3) bidders, namely, respondent FAR EAST MILLS SUPPLY CORPORATION (hereafter FEMSCO), MONARK and ADVANCE POWER submitted bid proposals and gave bid bonds equivalent to 5% of their respective bids, as required.

Thereafter, in a letter dated 12 December 1992 addressed to FEMSCO President Alfonso Po, PUREFOODS confirmed the award of the contract to FEMSCO -

Gentlemen:

This will confirm that Pure Foods Corporation has awarded to your firm the project: Supply and Installation of two (2) units of 1500 KW/unit Generator Sets at the Processed Meats Plant, Bo. San Roque, Marikina, based on your proposal number PC 28-92 dated November 20, 1992, subject to the following basic terms and conditions:

1. Lump sum contract of P6,137,293.00 (VAT included), for the supply of materials and labor for the local portion and the labor for the imported materials, payable by progress billing twice a month, with ten percent (10%) retention. The retained amount shall be released thirty (30) days after acceptance of the completed project and upon posting of Guarantee Bond in an amount equivalent to twenty percent (20%) of the contract price. The Guarantee Bond shall be valid for one (1) year from completion and acceptance of project. The contract price includes future increase/s in costs of materials and labor;
2. The project shall be undertaken pursuant to the attached specifications. It is understood that any item required to complete the project, and those not included in the list of items shall be deemed included and covered and shall be performed;
3. All materials shall be brand new;
4. The project shall commence immediately and must be completed within twenty (20) working days after the delivery of Generator Set to Marikina Plant, penalty equivalent to 1/10 of 1% of the purchase price for every day of delay;
5. The Contractor shall put up Performance Bond equivalent to thirty (30%) of the contract price, and shall procure All Risk Insurance equivalent to the contract price upon commencement of the project. The All Risk Insurance Policy shall be endorsed in favor of and shall be delivered to Pure Foods Corporation;
6. Warranty of one (1) year against defective material and/or workmanship.

Once finalized, we shall ask you to sign the formal contract embodying the foregoing terms and conditions.

Immediately, FEMSCO submitted the required performance bond in the amount of P1,841,187.90 and contractor's all-risk insurance policy in the amount of P6,137,293.00 which PUREFOODS through its Vice President Benedicto G. Tope acknowledged in a letter dated 18 December 1992. FEMSCO also made arrangements with its principal and started the PUREFOODS project by purchasing the necessary materials. PUREFOODS on the other hand returned FEMSCO's Bidder's Bond in the amount of P1,000,000.00, as requested.

Later, however, in a letter dated 22 December 1992, PUREFOODS through its Senior Vice President Teodoro L. Dimayuga unilaterally canceled the award as "significant factors were uncovered and brought to (their) attention which dictate (the) cancellation and warrant a total review and re-bid of (the) project." Consequently, FEMSCO protested the cancellation of the award and sought a meeting with PUREFOODS. However, on 26 March 1993, before the matter could be resolved, PUREFOODS already awarded the project and entered into a contract with JARDINE NELL, a division of Jardine Davies, Inc. (hereafter JARDINE), which incidentally was not one of the bidders.

FEMSCO thus wrote PUREFOODS to honor its contract with the former, and to JARDINE to cease and desist from delivering and installing the two (2) generators at PUREFOODS. Its demand letters unheeded, FEMSCO sued both PUREFOODS and JARDINE: PUREFOODS for reneging on its contract, and JARDINE for its unwarranted interference and inducement. Trial ensued. After FEMSCO presented its evidence, JARDINE filed a *Demurrer to Evidence*.

On 27 June 1994 the Regional Trial Court of Pasig, Br. 68,^[1] granted JARDINE's *Demurrer to Evidence*. The trial court concluded that "[w]hile it may seem to the plaintiff that by the actions of the two defendants there is something underhanded going on, this is all a matter of perception, and unsupported by hard evidence, mere suspicions and suppositions would not stand up very well in a court of law."^[2] Meanwhile trial proceeded as regards the case against PUREFOODS.

On 28 July 1994 the trial court rendered a decision ordering PUREFOODS: (a) to indemnify FEMSCO the sum of P2,300,000.00 representing the value of engineering services it rendered; (b) to pay FEMSCO the sum of US\$14,000.00 or its peso equivalent, and P900,000.00 representing contractor's mark-up on installation work, considering that it would be impossible to compel PUREFOODS to honor, perform and fulfill its contractual obligations in view of PUREFOOD's contract with JARDINE and noting that construction had already started thereon; (c) to pay attorney's fees in an amount equivalent to 20% of the total amount due; and, (d) to pay the costs. The trial court dismissed the counterclaim filed by PUREFOODS for lack of factual and legal basis.

Both FEMSCO and PUREFOODS appealed to the Court of Appeals. FEMSCO appealed the 27 June 1994 Resolution of the trial court which granted the *Demurrer to Evidence* filed by JARDINE resulting in the dismissal of the complaint against it, while PUREFOODS appealed the 28 July 1994 Decision of the same court which ordered it to pay FEMSCO.

On 14 August 1996 the Court of Appeals affirmed *in toto* the 28 July 1994 Decision of the trial court.^[3] It also reversed the 27 June 1994 Resolution of the lower court and ordered JARDINE to pay FEMSCO damages for inducing PUREFOODS to violate the latter's contract with FEMSCO. As such, JARDINE was ordered to pay FEMSCO P2,000,000.00 for moral damages. In addition, PUREFOODS was also directed to pay FEMSCO P2,000,000.00 as moral damages and P1,000,000.00 as exemplary damages as well as 20% of the total amount due as attorney's fees.

On 31 January 1997 the Court of Appeals denied for lack of merit the separate motions for reconsideration filed by PUREFOODS and JARDINE. Hence, these two (2) petitions for review filed by PUREFOODS and JARDINE which were subsequently consolidated.

PUREFOODS maintains that the conclusions of both the trial court and the appellate court are premised on a misapprehension of facts. It argues that its 12 December 1992 letter to FEMSCO was not an acceptance of the latter's bid proposal and award of the project but more of a qualified acceptance constituting a counter-offer which required FEMSCO's express *conforme*. Since PUREFOODS never received FEMSCO's *conforme*, PUREFOODS was very well within reason to revoke its qualified acceptance or counter-offer. Hence, no contract was perfected between PUREFOODS

and FEMSCO. PUREFOODS also contends that it was never in bad faith when it dealt with FEMSCO. Hence moral and exemplary damages should not have been awarded.

Corollarily, JARDINE asserts that the records are bereft of any showing that it had prior knowledge of the supposed contract between PUREFOODS and FEMSCO, and that it induced PUREFOODS to violate the latter's alleged contract with FEMSCO. Moreover, JARDINE reasons that FEMSCO, an artificial person, is not entitled to moral damages. But granting *arguendo* that the award of moral damages is proper, P2,000,000.00 is extremely excessive.

In the main, these consolidated cases present two (2) issues: first, whether there existed a perfected contract between PUREFOODS and FEMSCO; and second, granting there existed a perfected contract, whether there is any showing that JARDINE induced or connived with PUREFOODS to violate the latter's contract with FEMSCO.

A contract is defined as "a juridical convention manifested in legal form, by virtue of which one or more persons bind themselves in favor of another or others, or reciprocally, to the fulfillment of a prestation to give, to do, or not to do."^[4] There can be no contract unless the following requisites concur: (a) consent of the contracting parties; (b) object certain which is the subject matter of the contract; and, (c) cause of the obligation which is established.^[5] A contract binds both contracting parties and has the force of law between them.

Contracts are perfected by mere consent, upon the acceptance by the offeree of the offer made by the offeror. From that moment, the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.^[6] To produce a contract, the acceptance must not qualify the terms of the offer. However, the acceptance may be express or implied.^[7] For a contract to arise, the acceptance must be made known to the offeror. Accordingly, the acceptance can be withdrawn or revoked before it is made known to the offeror.

In the instant case, there is no issue as regards the subject matter of the contract and the cause of the obligation. The controversy lies in the consent - whether there was an acceptance of the offer, and if so, if it was communicated, thereby perfecting the contract.

To resolve the dispute, there is a need to determine what constituted the offer and the acceptance. Since petitioner PUREFOODS started the process of entering into the contract by conducting a bidding, Art. 1326 of the Civil Code, which provides that "[a]dvertisements for bidders are simply invitations to make proposals," applies. Accordingly, the *Terms and Conditions of the Bidding* disseminated by petitioner PUREFOODS constitutes the "advertisement" to bid on the project. The bid proposals or quotations submitted by the prospective suppliers including respondent FEMSCO, are the offers. And, the reply of petitioner PUREFOODS, the acceptance or rejection of the respective offers.

Quite obviously, the 12 December 1992 letter of petitioner PUREFOODS to FEMSCO constituted acceptance of respondent FEMSCO's offer as contemplated by law. The tenor of the letter, *i.e.*, "This will confirm that Pure Foods has awarded to your firm