

## THIRD DIVISION

[ G.R. No. 170966, June 22, 2016 ]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE  
DEPARTMENT OF AGRICULTURE PETITIONER, VS. ALBERTO  
LOOYUKO, DOING BUSINESS UNDER THE NAME AND STYLE OF  
NOAH'S ARK SUGAR HOLDINGS AND WILSON T. GO,  
RESPONDENTS.**

### D E C I S I O N

**PEREZ, J.:**

#### *The Case*

Before this Court is a Petition for Review under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision<sup>[1]</sup> dated 23 December 2005, of the Court of Appeals (CA) in CA-G.R. CV No. 66052. In that case, the CA affirmed the Decision, <sup>[2]</sup> dated 26 November 1999, of the Regional Trial Court, Branch 57, Makati City, dismissing the complaint of petitioner for Recovery of Possession of Personal Property and Damages with Prayer for Replevin.

#### *The Facts*

The antecedent facts of this case, as found by the trial court and adopted by the CA, are as follows:

Due to the sugar crisis in 1985, former President Fidel V. Ramos authorized the emergency importation of 100,000 metric tons of raw sugar from Thailand and Guatemala. National Sugar Refineries Corporation (NASUREFCO) was tasked by the government, thru [petitioner] Department of Agriculture (DA), to handle the importation. Three refineries were given allocations to process and refine raw sugar, namely:

- 1) Central Azucarera de Tarlac (CAT) - 8,300 metric tons
- 2) Central Azucarera de Don Pedro (CADP) - 8,300 metric tons
- 3) Noah's Ark - 5,400 metric tons

NASUREFCO contracted the services of MARUBENI to source the raw sugar and handle the shipment and delivery thereof to each of the above-named refineries on a door-to-door arrangement with the stipulation that in case of non-delivery, short delivery or loss of the raw sugar, the latter would be held liable therefor. x x x

On September 18, 1995, NASUREFCO and NOAH'S ARK HOLDING, represented by [respondent] Wilson T. Go, executed a **Refining Contract** x x x:<sup>[3]</sup>

x x x x

On September 20,<sup>[4]</sup> 1995, the vessel MV "Evemeria", carrying a cargo of 21,500 metric tons of raw sugar arrived [at] Poro Point, La Union. [After] MARUBENI completed the discharge of the raw sugar[,] [it] commenced the delivery thereof to the refineries, x x x.

The allocation of CAT was completely delivered in 16 days, from October 5 to 21, 1995, while the delivery of the allocation of CADP was completed in 13 days, from November 9 to 22, 1995.

Admittedly, the delivery of Noah's Ark's allocation of 5,400 metric tons [MT] of raw sugar was never completed.

The parties offer contrasting reason/reasons therefor.

On the one hand, [petitioner] blames the [respondents]. [Petitioner] adduced evidence to the effect that on October 28, 1995, Marubeni started the delivery of raw sugar to Noah's Ark. However, because of the 1.8 [% weight] discrepancy between the registered weight at Poro Point and at the weighing scale of Noah's Ark, Marubeni suspended the delivery of sugar x x x. NASUREFCO allegedly notified Noah's Ark immediately to recalibrate its weighing scale. It was only during the last week of December, 1995 that Noah's Ark's weighing scale was calibrated. Noah's Ark, however, questioned the accuracy of the December [re-]calibration. After another calibration was effected on January 5, 1996, Marubeni resumed its delivery of raw sugar to Noah's Ark x x x. After the discharge of the cargo on January 14, 1996, Marubeni immediately delivered the raw sugar to Noah's Ark Refinery in Mandaluyong City. But, [respondents] refused to accept [the same].

x x x. [Petitioner] demands delivery of the refined sugar withheld by [respondents] or payment of the peso value thereof plus damages.

[Respondents], upon the other hand x x x take exception to any blame for the delay in the calibration of the weighing scale. They contend [that] it took only one day to recalibrate the same and [petitioner] had no justification to delay the delivery of the raw sugar allocated to Noah's Ark. [Respondents] claim to have made repeated requests and follow-ups for a faster delivery to no avail until they threatened the [petitioner] with legal action. [Petitioner] resumed deliveries not only in a slow-pace but of inferior quality raw sugar x x x.

Noah's Ark rejected x x x three (3) truckloads of raw sugar from Marubeni for being of high color x x x. Some were dripping wet and could no longer be processed. Marubeni finally ended on February 14, 1996, or 4 months late, its delivery of 4,897.56 MT to Noah's Ark, which is 503 MT short of the allocated 5,400 MT under the contract x x x.

[Respondents] accuse [petitioner] of undue diversion to CADP of its allocation and switching the deteriorated raw sugar stock of CADP with

the good quality imported raw sugar allocated to Noah's Ark, which thus resulted in a much lesser volume yield of refined sugar. [Respondents] demanded payment of damages, [retention of] the processed refined sugar for unpaid fees due thereon and [offsetting of] the value [of the retained sugar] with [the] damages [respondents] sustained.<sup>[5]</sup>

### ***The Ruling of the Trial Court***

The trial court dismissed the complaint of petitioner and denied its prayer for the issuance of a writ of attachment. It found that:

1. Although the Refining Contract between petitioner and respondents did not provide for a period within which petitioner should deliver the raw sugar to respondents, the records categorically show that time was of the essence, as shown by the following circumstances:

First. The allocations of CAT and CADP were completely delivered in a fast pace x x x from the arrival thereof on September 2[0], 1995.

Second. [Petitioner] advised x x x Noah's Ark to prepare its refinery facilities and informed [respondents] of the expected date of arrival of the imported raw sugar.

Third. [Petitioner] **gave Noah's Ark a timetable or schedule of drawdown within which to withdraw the refined sugar** that would fall on the 5<sup>th</sup> week of selling schedule (1<sup>st</sup> week of December 1995) and end on the 11<sup>th</sup> week.

Fourth. **There was an acute shortage of refined sugar in the country** which compelled the government to import raw sugar and thus fastrack [sic] delivery to designated refineries and prompt distribution of refined sugar to outlets/consumers.<sup>[6]</sup> (Emphases supplied)

Clearly, the parties actually intended a period in the implementation of their contract. Thus, there was undue delay in delivering the sugar allocation of respondents when it took petitioner four (4) months<sup>[7]</sup> to deliver the raw sugar to respondents, which delivery was, nonetheless, never completed.<sup>[8]</sup> Such delay is highlighted when one notes that the deliveries to Central Azucarera de Tarlac (CAT) of 8,964.375 metric tons - which is in excess by 600.375 metric tons of its 8,364 metric tons allocation - took only 16 days while that of Central Azucarera de Don Pedro (CADP) consisting of 8,900 metric tons, which is 536 metric tons in excess of its 8,360 metric tons allocation, took only 13 days. Petitioner's delivery to respondent Noah's Ark of a much lesser volume of 4,897.56 metric tons - which is even 502.46 metric tons short of its allocated 5,400 metric tons — took several months.<sup>[9]</sup>

The lower court expressed doubt on the reason proffered by Marubeni as to why it stopped delivery to Noah's Ark: the latter's alleged defective weighing scale. According to the trial court, "no explanation was given as to how the 1.8% discrepancy came about except the say-so of Marubeni, which say-so is not the proper basis for determining the weight of the raw sugar." Under paragraph 3 of the

Refining Contract, all raw sugar deliveries shall be weighed at Noah's Ark's plant site truck scale and shall be final and conclusive on all parties;<sup>[10]</sup>

2. The raw sugar delivered to respondents had a polarity<sup>[11]</sup> rate of only 95 degrees and not 98 degrees, as claimed by petitioner. This finding was based on the result of the test conducted by respondents' laboratory technician at the refinery, which result was recorded in Noah's Ark's Raw Sugar Control Book. The trial court accepted and gave credence to the data recorded in respondents' Raw Sugar Control Book since they appear to be part of a group of regular entries of other clients of respondents and is thus considered an exception to the hearsay rule, being entries in the ordinary course of business;<sup>[12]</sup>

3. The total raw sugar actually delivered by petitioner to respondents was only 4,897 metric tons, instead of the 5,400 metric tons stipulated in the Refining Contract.<sup>[13]</sup> With a polarity rate of 95 degrees, only 77,830 bags of sugar were produced out of the 4,897 metric tons of raw sugar.<sup>[14]</sup> From this, petitioner was able to withdraw a total of 35,150 bags of refined sugar from respondents through various Authorities to Release Raw Sugars (ARSS) issued by respondents and as confirmed by Mr. Rolleo Ignacio (Mr. Ignacio), then Acting Administrator of the Sugar Regulatory Administration (SRA) and President of the NASUREFCO. The 25 April 1996 letter of Mr. Ignacio clearly and categorically showed that 35,150 bags were deducted from the total bags of refined sugar due petitioner;<sup>[15]</sup>

4. The storage of Noah's Ark's raw sugar allocation in the far away warehouse of CADP in Batangas while awaiting the recalibration of Noah's Ark's allegedly defective weighing scale is an unwarranted diversion, especially considering that Noah's Ark has its own warehouse at its plant site where the raw sugar could be stored. In fact, the storage of the sugar in the warehouse of Noah's Ark, and not elsewhere, appears to be obligatory because before the raw sugar arrived at Poro Point in La Union, or as early as 11 September 1995, then NASUREFCO President and SRA Administrator, Rodolfo A. Gamboa requested Noah's Ark to make available its warehouse space during the period of delivery. This was followed, on 17 October 1995, by another letter from petitioner's AVP for Finance, Mr. Angelito Dizon, informing respondents of the arrival of the raw sugar. As a result, respondents made its facilities available to NASUREFCO. In addition, petitioner's delay of four months in the delivery of the raw sugar to Noah's Ark lends credence to respondents' accusation that Noah's Ark's imported raw sugar allocation was switched with deteriorated raw sugar from the warehouse of CADP.<sup>[16]</sup>

6. Respondents reserved and upgraded their facilities and rejected other sugar processing contracts while they waited for the completion of the delivery of their contracted raw sugar allocation, as a result of which, they suffered business opportunity losses. Respondents are, therefore, entitled to damages. There is a causal connection between the breach by petitioner of its contractual obligation through its delay, diversion and switching of the raw sugar allocation of respondents and the damages suffered by the latter. Further, respondents are entitled to offset, pursuant to Article 1283 of the New Civil Code, the amount of the damages they are entitled to against the 42,680 bags of refined sugar in their possession valued at approximately P38,412,000.00 or P900.00 per bag.

Petitioner appealed the foregoing adverse judgment to the CA.

### ***The Ruling of the Court of Appeals***

In affirming the ruling of the trial court, the CA held that:

Jurisprudence teaches that an obligor incurs in delay even if the contract does not categorically state the period for its performance, if it can be inferred from its terms that time is of the essence. x x x

x x x x

Records bear that the main purpose of the importation of raw sugar was to address the severe shortage in its domestic production. In a letter dated November 2, 1995, NASUREFCO came out with a schedule of drawdown wherein the release by [respondents] of the refined sugar shall start in the fifth week of the selling schedule (first week of December 1995), until the eleventh week of the selling schedule (third week of January 1996). Unfortunately, the delivery to [respondents] by Marubeni Corporation, the supplier of raw sugar, was only completed sometime February 1996. [Respondents'] even sent several letters demanding the immediate delivery of the raw sugar. [Petitioner's] failure to deliver the raw sugar to [respondents] despite the latter's demands is eloquent proof that it incurred in delay in the performance of its obligation x x x.

x x x x

[The claim of petitioner] that the suspension of the delivery of the raw materials to [respondent] Noah's Ark was caused by a defective weighing scale x x x is readily controverted by the certification issued by GCH International Mercantile, Inc., an engineering firm accredited by [petitioner], stating that the discrepancy in the weighing scale is within the tolerable and acceptable fluctuation level. Also, Tsuyoshi Morita, former Manager of the Food Department of Marubeni Corporation, categorically testified that although they discovered during the first delivery that there was a defect in the weighing scale, they still [continued their delivery of] raw sugar x x x.

x x x x

[Petitioner's] claim that the trial court erred in finding that there was diversion and substitution of the raw sugar by Marubeni Corporation, is unfounded.

Tsuyoshi Morita of Marubeni Corporation admitted [during the trial of the case] that the raw sugar intended for [respondent] Noah's Ark was kept at the warehouse of Central Azucarera de Don Pedro until January 1996, despite the availability of the warehouse of [respondents] and the perishable nature of the commodity. The only reason given by Tsuyoshi Morita for the use of the Central Azucarera de [Don Pedro] warehouse instead of the warehouse of Noah's Ark was the defective weighing scale.