

THIRD DIVISION

[G.R. No. 170633, October 17, 2007]

**MCC INDUSTRIAL SALES CORPORATION, PETITIONER, VS.
SSANGYONG CORPORATION, RESPONDENT.**

DECISION

NACHURA, J.:

Before the Court is a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals in CA-G.R. CV No. 82983 and its Resolution^[2] denying the motion for reconsideration thereof.

Petitioner MCC Industrial Sales (MCC), a domestic corporation with office at Binondo, Manila, is engaged in the business of importing and wholesaling stainless steel products.^[3] One of its suppliers is the Ssangyong Corporation (Ssangyong),^[4] an international trading company^[5] with head office in Seoul, South Korea and regional headquarters in Makati City, Philippines.^[6] The two corporations conducted business through telephone calls and facsimile or telecopy transmissions.^[7] Ssangyong would send the *pro forma* invoices containing the details of the steel product order to MCC; if the latter conforms thereto, its representative affixes his signature on the faxed copy and sends it back to Ssangyong, again by fax.^[8]

On April 13, 2000, Ssangyong Manila Office sent, by fax, a letter^[9] addressed to Gregory Chan, MCC Manager [also the President^[10] of Sanyo Seiki Stainless Steel Corporation], to confirm MCC's and Sanyo Seiki's order of **220 metric tons** (MT) of hot rolled stainless steel under a preferential rate of **US\$1,860.00 per MT**. Chan, on behalf of the corporations, assented and affixed his signature on the *conforme* portion of the letter.^[11]

On April 17, 2000, Ssangyong forwarded to MCC *Pro Forma* Invoice No. **ST2-POSTSO401**^[12] containing the terms and conditions of the transaction. MCC sent back by fax to Ssangyong the invoice bearing the conformity signature^[13] of Chan. As stated in the *pro forma* invoice, payment for the ordered steel products would be made through an irrevocable letter of credit (L/C) at sight in favor of Ssangyong.^[14] Following their usual practice, delivery of the goods was to be made after the L/C had been opened.

In the meantime, because of its confirmed transaction with MCC, Ssangyong placed the order with its steel manufacturer, Pohang Iron and Steel Corporation (POSCO), in South Korea^[15] and paid the same in full.

Because MCC could open only a partial letter of credit, the order for 220MT of steel

was split into two,^[16] one for **110MT** covered by *Pro Forma* Invoice No. **ST2-POSTS0401-1**^[17] and another for **110MT** covered by **ST2-POSTS0401-2**,^[18] both dated April 17, 2000.

On June 20, 2000, Ssangyong, through its Manila Office, informed Sanyo Seiki and Chan, by way of a fax transmittal, that it was ready to ship **193.597MT** of stainless steel from Korea to the Philippines. It requested that the opening of the L/C be facilitated.^[19] Chan affixed his signature on the fax transmittal and returned the same, by fax, to Ssangyong.^[20]

Two days later, on June 22, 2000, Ssangyong Manila Office informed Sanyo Seiki, thru Chan, that it was able to secure a US\$30/MT price adjustment on the contracted price of US\$1,860.00/MT for the 200MT stainless steel, and that the goods were to be shipped in two tranches, the first 100MT on that day and the second 100MT not later than June 27, 2000. Ssangyong reiterated its request for the facilitation of the L/C's opening.^[21]

Ssangyong later, through its Manila Office, sent a letter, on June 26, 2000, to the Treasury Group of Sanyo Seiki that it was looking forward to receiving the L/C details and a cable copy thereof that day.^[22] Ssangyong sent a separate letter of the same date to Sanyo Seiki requesting for the opening of the L/C covering payment of the first 100MT not later than June 28, 2000.^[23] Similar letters were transmitted by Ssangyong Manila Office on June 27, 2000.^[24] On June 28, 2000, Ssangyong sent another facsimile letter to MCC stating that its principal in Korea was already in a difficult situation^[25] because of the failure of Sanyo Seiki and MCC to open the L/C's.

The following day, June 29, 2000, Ssangyong received, by fax, a letter signed by Chan, requesting an extension of time to open the L/C because MCC's credit line with the bank had been fully availed of in connection with another transaction, and MCC was waiting for an additional credit line.^[26] On the same date, Ssangyong replied, requesting that it be informed of the date when the L/C would be opened, preferably at the earliest possible time, since its Steel Team 2 in Korea was having problems and Ssangyong was incurring warehousing costs.^[27] To maintain their good business relationship and to support MCC in its financial predicament, Ssangyong offered to negotiate with its steel manufacturer, POSCO, another US\$20/MT discount on the price of the stainless steel ordered. This was intimated in Ssangyong's June 30, 2000 letter to MCC.^[28] On July 6, 2000, another follow-up letter^[29] for the opening of the L/C was sent by Ssangyong to MCC.

However, despite Ssangyong's letters, MCC failed to open a letter of credit.^[30] Consequently, on August 15, 2000, Ssangyong, through counsel, wrote Sanyo Seiki that if the L/C's were not opened, Ssangyong would be compelled to cancel the contract and hold MCC liable for damages for breach thereof amounting to US\$96,132.18, inclusive of warehouse expenses, related interests and charges.^[31]

Later, *Pro Forma* Invoice Nos. **ST2-POSTS080-1**^[32] and **ST2-POSTS080-2**^[33] dated August 16, 2000 were issued by Ssangyong and sent via fax to MCC. The invoices slightly varied the terms of the earlier *pro forma* invoices (ST2-POSTS0401,

ST2-POSTS0401-1 and ST2-POSTS0401-2), in that the quantity was now officially **100MT** per invoice and the price was reduced to **US\$1,700.00** per MT. As can be gleaned from the photocopies of the said August 16, 2000 invoices submitted to the court, they both bear the conformity signature of MCC Manager Chan.

On August 17, 2000, MCC finally opened an L/C with PCIBank for US\$170,000.00 covering payment for 100MT of stainless steel coil under Pro Forma Invoice No. **ST2-POSTS080-2**.^[34] The goods covered by the said invoice were then shipped to and received by MCC.^[35]

MCC then faxed to Ssangyong a letter dated August 22, 2000 signed by Chan, requesting for a price adjustment of the order stated in *Pro Forma Invoice No. **ST2-POSTS080-1***, considering that the prevailing price of steel at that time was US\$1,500.00/MT, and that MCC lost a lot of money due to a recent strike.^[36]

Ssangyong rejected the request, and, on August 23, 2000, sent a demand letter^[37] to Chan for the opening of the second and last L/C of US\$170,000.00 with a warning that, if the said L/C was not opened by MCC on August 26, 2000, Ssangyong would be constrained to cancel the contract and hold MCC liable for US\$64,066.99 (representing cost difference, warehousing expenses, interests and charges as of August 15, 2000) and other damages for breach. Chan failed to reply.

Exasperated, Ssangyong through counsel wrote a letter to MCC, on September 11, 2000, canceling the sales contract under **ST2-POSTS0401-1/ST2-POSTS0401-2**, and demanding payment of US\$97,317.37 representing losses, warehousing expenses, interests and charges.^[38]

Ssangyong then filed, on November 16, 2001, a civil action for damages due to breach of contract against defendants MCC, Sanyo Seiki and Gregory Chan before the Regional Trial Court of Makati City. In its complaint,^[39] Ssangyong alleged that defendants breached their contract when they refused to open the L/C in the amount of US\$170,000.00 for the remaining 100MT of steel under *Pro Forma Invoice Nos. **ST2-POSTS0401-1** and **ST2-POSTS0401-2***.

After Ssangyong rested its case, defendants filed a Demurrer to Evidence^[40] alleging that Ssangyong failed to present the original copies of the *pro forma* invoices on which the civil action was based. In an Order dated April 24, 2003, the court denied the demurrer, ruling that the documentary evidence presented had already been admitted in the December 16, 2002 Order^[41] and their admissibility finds support in Republic Act (R.A.) No. 8792, otherwise known as the Electronic Commerce Act of 2000. Considering that both testimonial and documentary evidence tended to substantiate the material allegations in the complaint, Ssangyong's evidence sufficed for purposes of a prima facie case.^[42]

After trial on the merits, the RTC rendered its Decision^[43] on March 24, 2004, in favor of Ssangyong. The trial court ruled that when plaintiff agreed to sell and defendants agreed to buy the 220MT of steel products for the price of US\$1,860 per MT, the contract was perfected. The subject transaction was evidenced by *Pro Forma Invoice Nos. **ST2-POSTS0401-1** and **ST2-POSTS0401-2***, which were later amended only in terms of reduction of volume as well as the price per MT, following

Pro Forma Invoice Nos. **ST2-POSTS080-1** and **ST2-POSTS080-2**. The RTC, however, excluded Sanyo Seiki from liability for lack of competent evidence. The *fallo* of the decision reads:

WHEREFORE, premises considered, Judgment is hereby rendered ordering defendants MCC Industrial Sales Corporation and Gregory Chan, to pay plaintiff, jointly and severally the following:

1) Actual damages of US\$93,493.87 representing the outstanding principal claim plus interest at the rate of 6% per annum from March 30, 2001.

2) Attorney's fees in the sum of P50,000.00 plus P2,000.00 per counsel's appearance in court, the same being deemed just and equitable considering that by reason of defendants' breach of their obligation under the subject contract, plaintiff was constrained to litigate to enforce its rights and recover for the damages it sustained, and therefore had to engage the services of a lawyer.

3) Costs of suit.

No award of exemplary damages for lack of sufficient basis.

SO ORDERED.^[44]

On April 22, 2004, MCC and Chan, through their counsel of record, Atty. Eladio B. Samson, filed their Notice of Appeal.^[45] On June 8, 2004, the law office of Castillo Zamora & Poblador entered its appearance as their collaborating counsel.

In their Appeal Brief filed on March 9, 2005,^[46] MCC and Chan raised before the CA the following errors of the RTC:

I. THE HONORABLE COURT A *QUO* PLAINLY ERRED IN FINDING THAT APPELLANTS VIOLATED THEIR CONTRACT WITH APPELLEE

A. THE HONORABLE COURT A *QUO* PLAINLY ERRED IN FINDING THAT APPELLANTS AGREED TO PURCHASE 200 METRIC TONS OF STEEL PRODUCTS FROM APPELLEE, INSTEAD OF ONLY 100 METRIC TONS.

1. THE HONORABLE COURT A *QUO* PLAINLY ERRED IN ADMITTING IN EVIDENCE THE *PRO FORMA* INVOICES WITH REFERENCE NOS. ST2-POSTS0401-1 AND ST2-POSTS0401-2.

II. THE HONORABLE COURT A *QUO* PLAINLY ERRED IN AWARDING ACTUAL DAMAGES TO APPELLEE.

III. THE HONORABLE COURT A *QUO* PLAINLY ERRED IN AWARDING ATTORNEY'S FEES TO APPELLEE.

IV. THE HONORABLE COURT A *QUO* PLAINLY ERRED IN FINDING APPELLANT GREGORY CHAN JOINTLY AND SEVERALLY LIABLE

WITH APPELLANT MCC.^[47]

On August 31, 2005, the CA rendered its Decision^[48] affirming the ruling of the trial court, but absolving Chan of any liability. The appellate court ruled, among others, that *Pro Forma* Invoice Nos. **ST2-POSTS0401-1** and **ST2-POSTS0401-2** (Exhibits "E", "E-1" and "F") were admissible in evidence, although they were mere facsimile printouts of MCC's steel orders.^[49] The dispositive portion of the appellate court's decision reads:

WHEREFORE, premises considered, the Court holds:

(1) The award of actual damages, with interest, attorney's fees and costs ordered by the lower court is hereby AFFIRMED.

(2) Appellant Gregory Chan is hereby ABSOLVED from any liability.

SO ORDERED.^[50]

A copy of the said Decision was received by MCC's and Chan's principal counsel, Atty. Eladio B. Samson, on September 14, 2005.^[51] Their collaborating counsel, Castillo Zamora & Poblador,^[52] likewise, received a copy of the CA decision on September 19, 2005.^[53]

On **October 4, 2005**, Castillo Zamora & Poblador, on behalf of MCC, filed a motion for reconsideration of the said decision.^[54] Ssangyong opposed the motion contending that the decision of the CA had become final and executory on account of the failure of MCC to file the said motion within the reglementary period. The appellate court resolved, on November 22, 2005, to deny the motion on its merits,^[55] without, however, ruling on the procedural issue raised.

Aggrieved, MCC filed a petition for review on *certiorari*^[56] before this Court, imputing the following errors to the Court of Appeals:

THE COURT OF APPEALS DECIDED A LEGAL QUESTION NOT IN ACCORDANCE WITH JURISPRUDENCE AND SANCTIONED A DEPARTURE FROM THE USUAL AND ACCEPTED COURSE OF JUDICIAL PROCEEDINGS BY REVERSING THE COURT A QUO'S DISMISSAL OF THE COMPLAINT IN CIVIL CASE NO. 02-124 CONSIDERING THAT:

I. THE COURT OF APPEALS ERRED IN SUSTAINING THE ADMISSIBILITY IN EVIDENCE OF THE PRO-FORMA INVOICES WITH REFERENCE NOS. ST2-POSTSO401-1 AND ST2-POSTSO401-2, DESPITE THE FACT THAT THE SAME WERE MERE PHOTOCOPIES OF FACSIMILE PRINTOUTS.

II. THE COURT OF APPEALS FAILED TO APPRECIATE THE OBVIOUS FACT THAT, EVEN ASSUMING PETITIONER BREACHED THE SUPPOSED CONTRACT, THE FACT IS THAT PETITIONER FAILED TO PROVE THAT IT SUFFERED