

THIRD DIVISION

[G.R. No. 137378, October 12, 2000]

PHILIPPINE ALUMINUM WHEELS, INC., PETITIONER, VS. FASGI ENTERPRISES, INC., RESPONDENT.

DECISION

VITUG, J.:

On 01 June 1978, FASGI Enterprises Incorporated ("FASGI"), a corporation organized and existing under and by virtue of the laws of the State of California, United States of America, entered into a distributorship arrangement with Philippine Aluminum Wheels, Incorporated ("PAWI"), a Philippine corporation, and Fratelli Pedrini Sarezzo S.P.A. ("FPS"), an Italian corporation. The agreement provided for the purchase, importation and distributorship in the United States of aluminum wheels manufactured by PAWI. Pursuant to the contract, PAWI shipped to FASGI a total of eight thousand five hundred ninety four (8,594) wheels, with an FOB value of US\$216,444.30 at the time of shipment, the first batch arriving in two containers and the second in three containers. Thereabouts, FASGI paid PAWI the FOB value of the wheels. Unfortunately, FASGI later found the shipment to be defective and in non-compliance with stated requirements, viz;

"A. contrary to the terms of the Distributorship Agreement and in violation of U.S. law, the country of origin (the Philippines) was not stamped on the wheels;

"B. the wheels did not have weight load limits stamped on them as required to avoid mounting on excessively heavy vehicles, resulting in risk of damage or bodily injury to consumers arising from possible shattering of the wheels;

"C. many of the wheels did not have an indication as to which models of automobile they would fit;

"D. many of the wheels did not fit the model automobiles for which they were purportedly designed;

"E. some of the wheels did not fit any model automobile in use in the United States;

"F. most of the boxes in which the wheels were packed indicated that the wheels were approved by the Specialty Equipment Manufacturer's Association (hereafter, `SEMA'); in fact no SEMA approval has been obtained and this indication was therefore false and could result in fraud upon retail customers purchasing the wheels."^[1]

On 21 September 1979, FASGI instituted an action against PAWI and FPS for breach of contract and recovery of damages in the amount of US\$2,316,591.00 before the United States District Court for the Central District of California. In January 1980, during the pendency of the case, the parties entered into a settlement, entitled "Transaction" with the corresponding Italian translation "Convenzione Transsativa," where it was stipulated that FPS and PAWI would accept the return of not less than 8,100 wheels after restoring to FASGI the purchase price of US\$268,750.00 via four (4) irrevocable letters of credit ("LC"). The rescission of the contract of distributorship was to be effected within the period starting January up until April 1980.^[2]

In a telex message, dated 02 March 1980, PAWI president Romeo Rojas expressed the company's inability to comply with the foregoing agreement and proposed a revised schedule of payment. The message, in part, read:

"We are most anxious in fulfilling all our obligations under compromise agreement executed by our Mr. Giancarlo Dallera and your Van Curen. We have tried our best to comply with our commitments, however, because of the situation as mentioned in the foregoing and currency regulations and restrictions imposed by our government on the outflow, of foreign currency from our country, we are constrained to request for a revised schedule of shipment and opening of L/Cs.

"After consulting with our bank and government monetary agencies and on the assumption that we submit the required pro-forma invoices we can open the letters of credit in your favor under the following schedule:

"A) First L/C - it will be issued in April 1980 payable 90 days thereafter

"B) Second L/C - it will be issued in June 1980 payable 90 days thereafter

"C) Third L/C - it will be issued in August 1980 payable 90 days thereafter

"D) Fourth L/C - it will be issued in November 1980 payable 90 days thereafter

"We understand your situation regarding the lease of your warehouse. For this reason, we are willing to defray the extra storage charges resulting from this new schedule. If you cannot renew the lease [of] your present warehouse, perhaps you can arrange to transfer to another warehouse and storage charges transfer thereon will be for our account. We hope you understand our position. The delay and the revised schedules were caused by circumstances totally beyond our control."^[3]

On 21 April 1980, again through a telex message, PAWI informed FASGI that it was impossible to open a letter of credit on or before April 1980 but assured that it would do its best to comply with the suggested schedule of payments.^[4] In its telex reply of 29 April 1980, FASGI insisted that PAWI should meet the terms of the proposed schedule of payments, specifically its undertaking to open the first LC within April of 1980, and that "If the letter of credit is not opened by April 30, 1980, then x x x [it would] immediately take all necessary legal action to protect [its] position."^[5]

Despite its assurances, and FASGI's insistence, PAWI failed to open the first LC in April 1980 allegedly due to Central Bank "inquiries and restrictions," prompting FASGI to pursue its complaint for damages against PAWI before the California district court. Pre-trial conference was held on 24 November 1980. In the interim, the parties, realizing the protracted process of litigation, resolved to enter into another arrangement, this time entitled "Supplemental Settlement Agreement," on 26 November 1980. In substance, the covenant provided that FASGI would deliver to PAWI a container of wheels for every LC opened and paid by PAWI:

"3. Agreement

"3.1 Sellers agree to pay FASGI Two Hundred Sixty-Eight Thousand, Seven Hundred Fifty and 00/100 Dollars (\$268,750.00), plus interest and storage costs as described below. Sellers shall pay such amount by delivering to FASGI the following four (4) irrevocable letters of credit, confirmed by Crocker Bank, Main Branch, Fresno, California, as set forth below:

"(i) on or before June 30, 1980, a documentary letter of credit in the amount of (a) Sixty-Five Thousand, Three Hundred Sixty-nine and 00/100 Dollars (\$65,369.00), (b) plus interest on that amount at the annual rate of 16.25% from January 1, 1980 until July 31, 1980, (c) plus Two Thousand Nine Hundred Forty Dollars and 00/100 (\$2,940.00) and (d) with interest on that sum at the annual rate of 16.25% from May 1, 1980 to July 31, 1980, payable on or after August 31, 1980;

"(ii) on or before September 1, 1980, a documentary letter of credit in the amount of (a) Sixty-Seven Thousand, Seven Hundred Ninety-Three Dollars and Sixty-Seven Cents (\$67,793.67) plus (b) Two Thousand, Nine Hundred Forty and 00/100 Dollars (\$2,940.00), plus (c) interest at an annual rate equal to the prime rate of Crocker Bank, San Francisco, in effect from time to time, plus two percent on the amount in (a) from January 1, 1980 until December 21, 1980, and on the amount set forth in (b) from May 1, 1980 until December 21, 1980, payable ninety days after the date of the bill of lading under the letter of credit;

"(iii) on or before November 1, 1980, a documentary letter of credit in the amount of (a) Sixty-Seven Thousand, Seven Hundred Ninety-Three Dollars and Sixty-Seven Cents (\$67,793.67) plus (b) Two Thousand, Nine Hundred Forty and 00/100 Dollars (\$2,490.00), plus (c) interest at an annual rate equal to the prime rate of Crocker Bank, San Francisco, in effect from time to time, plus two percent on the amount in (a) from January 1, 1980 until February 21, 1981, and on the amount set forth in (b) from May 1, 1980 until February 21, 1981, payable ninety days after the date of the bill of lading under the latter of credit;

"(iv) on or before January 1, 1981, a documentary letter of credit in the amount of (a) Sixty-Seven Thousand, Seven Hundred Ninety-Three Dollars and Sixty-Seven Cents (\$67,793.67) plus (b) Five Thousand, Eight Hundred Eighty and 00/100 Dollars (\$5,880.00), plus (c) interest at an annual rate equal to the prime rate of Crocker Bank, San Francisco, in

effect from time to time, plus two percent on the amount in (a) from January 1, 1980 until April 21, 1981, and on the amount set forth in (b) from May 1, 1980 until April 21, 1981, payable ninety days after the date of the bill of lading under the latter of credit."^[6]

Anent the wheels still in the custody of FASGI, the supplemental settlement agreement provided that -

"3.4 (a) Upon execution of this Supplemental Settlement Agreement, the obligations of FASGI to store or maintain the Containers and Wheels shall be limited to (i) storing the Wheels and Containers in their present warehouse location and (ii) maintaining in effect FASGI's current insurance in favor of FASGI, insuring against usual commercial risks for such storage in the principal amount of the Letters of Credit described in Paragraph 3.1. FASGI shall bear no liability, responsibility or risk for uninsurable risks or casualties to the Containers or Wheels.

"x x x x x x x x x

"(e) From and after February 28, 1981, unless delivery of the Letters of Credit are delayed past such date pursuant to the penultimate Paragraph 3.1, in which case from and after such later date, FASGI shall have no obligation to maintain, store or deliver any of the Containers or Wheels."^[7]

The deal allowed FASGI to enter before the California court the foregoing stipulations in the event of the failure of PAWI to make good the scheduled payments; thus -

"3.5 Concurrently with execution and delivery hereof, the parties have executed and delivered a Mutual Release (the `Mutual Release'), and a Stipulation for Judgment (the `Stipulation for Judgment') with respect to the Action. In the event of breach of this Supplemental Settlement Agreement by Sellers, FASGI shall have the right to apply immediately to the Court for entry of Judgment pursuant to the Stipulation for Judgment in the full amount thereof, less credit for any payments made by Sellers pursuant to this Supplemental Settlement Agreement. FASGI shall have the right thereafter to enforce the Judgment against PAWI and FPS in the United States and in any other country where assets of FPS or PAWI may be located, and FPS and PAWI hereby waive all defenses in any such country to execution or enforcement of the Judgment by FASGI. Specifically, FPS and PAWI each consent to the jurisdiction of the Italian and Philippine courts in any action brought by FASGI to seek a judgment in those countries based upon a judgment against FPS or PAWI in the Action."^[8]

In accordance with the aforementioned paragraph 3.5 of the agreement, the parties made the following stipulation before the California court:

"The undersigned parties hereto, having entered into a Supplemental Settlement Agreement in this action,

"IT IS HEREBY STIPULATED by and between plaintiff FASGI Enterprises,

Inc. ('FASGI') and defendants Philippine Aluminum Wheels, Inc., ('PAWI'), and each of them, that judgment may be entered in favor of plaintiff FASGI and against PAWI, in the amount of Two Hundred Eighty Three Thousand Four Hundred Eighty And 01/100ths Dollars (\$283,480.01).

"Plaintiff FASGI shall also be entitled to its costs of suit, and to reasonable attorneys' fees as determined by the Court added to the above judgment amount."^[9]

The foregoing supplemental settlement agreement, as well as the motion for the entry of judgment, was executed by FASGI president Elena Buholzer and PAWI counsel Mr. Thomas Ready.

PAWI, again, proved to be remiss in its obligation under the supplemental settlement agreement. While it opened the first LC on 19 June 1980, it, however, only paid on it nine (9) months after, or on 20 March 1981, when the letters of credit by then were supposed to have all been already posted. This lapse, notwithstanding, FASGI promptly shipped to PAWI the first container of wheels. Again, despite the delay incurred by PAWI on the second LC, FASGI readily delivered the second container. Later, PAWI totally defaulted in opening and paying the third and the fourth LCs, scheduled to be opened on or before, respectively, 01 September 1980 and 01 November 1980, and each to be paid ninety (90) days after the date of the bill of lading under the LC. As so expressed in their affidavits, FASGI counsel Frank Ker and FASGI president Elena Buholzer were more inclined to believe that PAWI's failure to pay was due not to any restriction by the Central Bank or any other cause than its inability to pay. These doubts were based on the telex message of PAWI president Romeo Rojas who attached a copy of a communication from the Central Bank notifying PAWI of the bank's approval of PAWI's request to open LCs to cover payment for the re-importation of the wheels. The communication having been sent to FASGI before the supplemental settlement agreement was executed, FASGI speculated that at the time PAWI subsequently entered into the supplemental settlement agreement, its request to open LCs had already been approved by the Central Bank. Irrked by PAWI's persistent default, FASGI filed with the US District Court of the Central District of California the following stipulation for judgment against PAWI.

"PLEASE TAKE NOTICE that on May 17, 1982 at 10:00 A.M. in the Courtroom of the Honorable Laughlin E. Waters of the above Court, plaintiff FASGI ENTERPRISES, INC. (hereinafter 'FASGI') will move the Court for entry of Judgment against defendant PHILIPPINE ALUMINUM WHEELS, INC. (hereinafter 'PAWI'), pursuant to the Stipulation for Judgment filed concurrently herewith, executed on behalf of FASGI and PAWI by their respective attorneys, acting as their authorized agents.

"Judgment will be sought in the total amount of P252,850.60, including principal and interest accrued through May 17, 1982, plus the sum of \$17,500.00 as reasonable attorneys' fees for plaintiff in prosecuting this action.

"The Motion will be made under Rule 54 of the Federal Rules of Civil Procedure, pursuant to and based upon the Stipulation for Judgment, the