

**EMBEE TRANSPORTATION CORPORATION, PLAINTIFF-APPELLANT,
VS. HOSPICIO CAMACHO, JAIME DE LA FUENTE AND HERMINIO
REYES, DEFENDANTS-APPELLEES.**

G.R. No. L-43863. November 29, 1977

Ponente: MARTIN, J.

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MARTIN, J.:

This is an appeal[1] from the decision of the Court of First Instance of Manila, Branch X,[2] in Civil Case No. 83693 dismissing the complaint of plaintiff-appellant for the collection of the unpaid balance of the purchase price of a certificate of public convenience to operate a taxicab service of 15 units which the plaintiff-appellant sold to the defendants-appellees for P82,500.00. In dismissing the plaintiff-appellant's complaint, the trial court took cognizance of a preliminary injunction issued by this Court in Case No. L-145-47 restraining the Public Service Commission from approving the sale and transfer of the aforementioned certificate of public convenience to operate the taxicab service of 15 units in Public Service Commission Case No. 69-6073.

At the pre-trial held on February 14, 1972 the following stipulation of facts was agreed upon by the parties:

Plaintiff-appellant Embee Transportation Corporation was the holder of a certificate of public convenience to operate 30 units of taxicabs within the City of Manila. In September 1969 it sold 15 of these units to the defendants-appellees Hospicio Camacho, Jaime de la Fuente and Herminio Reyes. At the time of the sale the plaintiff-appellant showed to them its certificate of public convenience to operate the 30 units of taxicabs within the City of Manila. Upon the execution of the deed of sale over the 15 units, the defendants-appellees paid to plaintiff-appellant the amount of P41,250.00 and agreed to pay the balance upon approval of the sale and transfer of the corresponding certificate of public convenience to operate the 15 units to them by the Public Service Commission.

On October 29, 1969, the Public Service Commission in its decision in Case No. 69-6073 approved the sale and transfer of the certificate of public convenience to operate the 15 units of taxicabs to the defendants-appellees[3] and authorized them to operate the 15 units of taxicabs within the City of Manila and to any place within the Island of Luzon.

On November 14, 1969, the Supreme Court issued a writ of preliminary injunction in Civil Case No. L-31145-47, entitled Miguel Mendoza vs. Public Service Commission, et al., enjoining certain persons named therein as well as the Public Service Commission from further approving any application for the sale of provincial taxis.[4] Although said writ, of preliminary injunction includes the plaintiff-appellant, it does not, however, make mention of the defendants-appellees. Because of the aforesaid preliminary writ of injunction issued in Civil Case No. L-31145-47 in which plaintiff-appellant is allegedly included, they refused to pay their balance of the purchase price of the 15 units of taxicabs due to plaintiff-appellant.

On January 8, 1970, the Public Service Commission issued a certification that the defendants-appellees are not among those listed in the writ of preliminary injunction issued by the Supreme Court in Civil Case No.

L-31145-47, entitled Miguel Mendoza vs. Public Service Commission, et al. In fact, they were even issued Manila stickers to operate their taxicabs within the City both by the Public Service Commission and the Manila Police Department^[5] and even with the issuance of said writ of preliminary injunction, the defendants-appellees have made further payments on the balance of their obligation to plaintiff-appellant, the last payment being on May 8, 1970 in the amount of P1,000.00.

The main issue in this appeal is whether or not the defendants-appellees are still bound to pay the plaintiff-appellant the unpaid balance of the purchase price of the certificate of public convenience to operate the fifteen units of taxicabs sold to them by plaintiff-appellant. We hold, they are. An examination of the deed of sale of the certificate of public convenience to operate the 15 units of taxicabs shows that it is a perfected contract; there is consent of the parties; there is the consideration in the amount of P82,500.00 of which P41,250.00 was paid to plaintiff-appellant (vendor at the time the contract was signed) the balance of P41,250.00 "payable upon final approval of the contract by the Public Service Commission." It appears in the contract that the payment of the balance of P41,250.00 is subject to the condition that the contract of sale is finally approved by the Public Service Commission. In refusing to pay the balance of P41,250.00 defendants-appellees claim that they are not bound to pay the amount because the deed of sale in question has not been approved yet by the Public Service Commission because the latter has been allegedly en-joined by the Supreme Court in Civil Case No. L-31145-47, entitled Miguel Mendoza vs. Public Service Commission, et al. to further approve any application for the sale of provincial taxis. A careful examination of the records, however, show that as of October 29, 1969, the sale and transfer of the certificate of public convenience of the 15 units of taxicabs to defendants-appellees was duly approved by the Public Service Commission in Case No. 69-6073. The decision itself authorized the defendants-appellees to operate the 15 units of taxicabs within the City of Manila. The Public Service Commission issued on January 8, 1970 a certification to the effect that the defendants-appellees are not among those included among those persons listed in the restraining order of the Supreme Court in Civil Case No. L-31145-47. In fact the defendants-appellees were issued Manila stickers by the Public Service Commission and the Manila Police Department to operate the aforesaid taxicabs within the City of Manila and suburbs. The defendants-appellees never paid attention to the supposed writ of preliminary injunction in Civil Case No. L-31145-47 as shown by the fact that they even made payments on the balance of their obligation to plaintiff-appellant even after the issuance of said injunction, the last payment being made on May 8, 1970 in the amount of P1,000.00. A close look into the writ of preliminary injunction issued by this Court in Case No. L-31145-47, which is an action filed by Miguel Mendoza against the Public Service Commission and other respondents including the plaintiff-appellant for the reversion of all provincial taxis which were converted into taxis for city operation, enjoins the Public Service Commission from enforcing its decision in Case No. 69-2926 entitled *Silverio vs. Mendoza*, as amended by its order of August 6, 1969, as well as its decision dated July 24, 1969 in Case No. 69-4072, entitled *Zafra vs. Mendoza*, and from approving transfers as well as sales of rights emanating from said decisions and furthermore enjoining the other respondents and their successors, agents or representatives from operating their taxicabs in Manila and suburbs pursuant to the decisions. It can easily be noted that the aforesaid writ of preliminary injunction applies to the enforcement of the Public Service Commission's decision in Case No. 69-2926 and Case No. 69-4072, and to all other restrained acts emanating from those aforesaid decisions but not to the decision of the Public Service Commission in Case No. 69-6073, dated October 29, 1969 which approved the sale and transfer of certificate of public convenience to operate the 15 units of taxicabs in favor of defendants-appellees for the simple reason that the latter have not even been named as defendants in said Civil Case No. L-31145-47; much less have they been served with copies of this Court's injunction in said case. We agree with plaintiff-appellant's argument that the Court's injunction of November 14, 1969 enjoining the Public Service Commission from approving transfers as well as sales of rights intended to convert provincial taxis into taxis for city operation should be prospective and not retroactive in effect and

therefore, the same could not affect the Public Service Commission's decision in Case No. 69-6073, which was promulgated as early as October 29, 1969. If the defendants-appellees believed that there was a vice or flaw in their contract with the plaintiff-appellant because of the non-approval of the sale by the Public Service Commission, then the proper thing for them to do would be to ask for a rescission of the sale under Art. 1599 (4), Civil Code.[6] Defendants-appellees did not do this. They did not return or offer to return the subject matter of the sale to the plaintiff-appellant and recover the price or any part thereof which they had paid. Their refusal to pay the remaining balance of the agreed consideration (P41,250.00) on the alleged ground of vice or defect in the subject matter in the contract while at the same time possessing and enjoying the same is untenable both on the grounds of law and equity. From all indications it would appear to Us, that defendants-appellees made use of this Court's injunction in Civil Case No. L-31145-47 as a lame excuse either to escape liability or to delay the enforcement of a lawful and valid obligation of paying the balance to plaintiff-appellant. This can be deduced from the fact that they continued enjoying the use of the aforementioned certificate of public convenience without paying the balance of the agreed consideration. The taint of bad faith on defendants-appellees' acts cannot just be disregarded.

WHEREFORE, the decision of the trial court dated May 5, 1972 is hereby reversed and set aside; and a new judgment entered based on the agreed stipulation of facts between the parties; ordering defendants-appellees to pay the balance of the agreed consideration in the amount of P27,500.00, with legal interest from October 29, 1969, when the sale was approved by the Public Service Commission until the said amount is fully paid; to pay attorney's fees equivalent to 10% of the recoverable amount plus costs.

SO ORDERED.

Makasiar, Muñoz Palma, Fernandez, and Guerrero, JJ., concur.
Teehankee, (Chairman), J., took no part.

[1] Certified to this Court by the Court of Appeals, Fifth Division, Associate Justices Ramon C. Fernandez, Ricardo Puno and Delfin Batacan in its Resolution dated April 30, 1976, forwarded to Us CA-G.R. No. 51554-R, entitled "Embee Transportation Corporation vs. Hospicio Camacho, et al."

[2] Presided over by Judge Jose L. Moya.

[3] Exhibit A.

[4] Exhibit B.

[5] Exhibit C.

[6] ART. 1599. When there is a breach of warranty the seller, the buyer may, at his election:

x x x x x

(4) Rescind the contract of sale and refuse to receive the goods or if the goods have already been received, return them or offer to return them to the seller and recover the price or any part thereof which has been paid.

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