

BUENASENSEN SY, PETITIONER, VS. THE HON. COURT OF APPEALS, (SEVENTH DIVISION) AND JAIME LUZON, RESPONDENTS.

G.R. No. L-39853. August 17, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

We gave due course to this Petition for the Review of the decision of the then Court of Appeals (in CA-G.R. No. 49112-R entitled Jaime Luzon, Plaintiff-Appellee vs. Buenasenso Sy, Defendant-Appellant) "only as to the amount of liquidated damages".[1]

On March 20, 1969, petitioner, Buenasenso SY, and private respondent, Jaime LUZON, entered into a Distributorship Agreement, whereby LUZON, as producer, would supply SY, as distributor, sixty metric tons monthly of ipil-ipil leaves at the price stipulated therein. The agreement was to last for two years, extendible for another two years upon mutual agreement of the parties. Paragraph VI of the Agreement provided:

"In the event of violation of any of the provisions of this contract by any of the contracting parties, the complaining party shall give the other a warning to correct said violation within a period of Sixty (60) days. If after said period, the violator has failed to take proper remedies to comply with the provision in question, a notice Sixty (60) days shall be given the violator for the final termination of the contract, with right on the part of the aggrieved party to collect liquidated damages in the sum of TWENTY Thousand (P20,000.00) Pesos Philippine Currency, and attorney's fees and other expenses in the cases of litigation by reason of such violation."

The Agreement also stipulated:

"III

DISTRIBUTOR shall extend to 'X' (the producer) the sum of Four Thousand (P4,000.00) Pesos as revolving capital, payable at Fifty (P50.00) Pesos per shipment of Ipil-Ipil delivered to DISTRUBUTOR without interest
x x x "

Pursuant to their agreement, SY extended to LUZON the revolving capital of P4,000.00.

From March to June, 1969, or a period of approx-imately three (3) months, LUZON effected deliveries of approximately 133.2 metric tons of ipil-ipil leaves (Exhibits "B-D"), valued at P29,645.14[2], short of the stipulated quantity of 60 metric tons a month. Subsequently, the following events transpired, as summarized by the Court of Appeals:

"x x x In June, after the seventh and eighth shipments, the defendant (Buenasenso SY) presented to the plaintiff (Jaime LUZON) the statement of account, Exhibit D, whereby defendant deducted from the value of the shipments all the advances, including the sun of P3,700.00 still due on the revolving capital, leaving a net proceed in favor of the plaintiff in the sum of P1,963.19. This was received by the plaintiff and he signed the statement of account, Exhibit D, on the promise of the defendant that he would send the money to the plaintiff.

When defendant failed to send the revolving capital to the plaintiff, the latter sent a telegram on June 21, 1969, Exhibit E, reiterating his request that defendant transmit to him immediately the agreed amount and to wire his reply. Defendant did not answer this letter. About the end of July, plaintiff came to Manila and asked the defendant to deliver to him the advance capital. Defendant did not give it, and plaintiff had to beg him even for his expenses; and defendant gave him the measly amount of P50.00 for which he signed a receipt dated July 29, 1969. When the advance capital was not forthcoming, the plaintiff wrote the letter, Exhibit F, dated August 7, 1969, requesting that defendant correct the violation of the terms of the agreement within sixty days from the receipt thereof, and that 'the same (letter) shall be the written notice in accordance with paragraph 6 of the contract.' Defendant likewise did not answer this letter. Hence, on November 18, 1969, plaintiff filed the present complaint."^[3]

On April 20, 1971, the Court of First Instance of Camarines Sur rendered judgment against SY for having violated the contract, even as the Court found that LUZON was short in deliveries, reasoning that since no demand or notice was served on him by SY, apparently the latter had condoned such delinquent performance. The decretal portion of that Court's judgment reads:

"IN VIEW OF ALL THE FOREGOING, the court finds for the plaintiff. The terms of the contract between him and the defendant Buenaseso Sy having been violated by the latter, the said defendant should pay unto the court or the plaintiff the sum of P4,000.00 representing the revolving capital which ought to have been paid by the defendant to plaintiff and the sum of TWENTY THOUSAND PESOS (P20,000.00) liquidated damages; P2,000.00 for attorney's fees and the costs of the proceedings."

On appeal by SY, the Court of Appeals eliminated the sum of P4,000.00, representing the revolving capital which should have been extended to LUZON, stating that the latter, by praying for liquidated damages, is suing for rescission and not for specific performance. The dispositive portion of the Appellate Court's judgment reads:

"WHEREFORE, judgment is rendered ordering the defendant to pay to the plaintiff liquidated damages in the amount of P20,000.00, and attorney's fees of P2,000.00. No costs."

In seeking a reduction of damages, if not a reversal of the judgment before us, SY contends:

"(a) Liquidated damages must be reduced here the claimant violated the terms of the contract and in any case where award becomes unconscionable or inequitable; the nature and the circumstances of the violation by the offender also a relevant factor in determining amount of damages.

"(b) Other factors exist upon which to predicate reversal or mitigation; petitioner's lack of bad faith important in determining issue."

There is no question that liquidated damages of P20,000.00 were agreed upon by the parties in case of breach thereof. There is no question either that SY had violated the contract by not continuing to provide the revolving capital. As provided for by Article 2227 of the Civil Code, however,

"Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable."

In the present case, the Court of Appeals found as a fact that LUZON "had not delivered the 60 tons of ipil-ipil leaves monthly as agreed upon"^[4], a factual finding that is binding upon us. He, therefore, neither complied faithfully with the agreement. Equitably, therefore, since LUZON had also violated the contract, although the violation was not actionable, and in the exercise of the Court's discretion, we reduce the liquidated damages to P10,000.00, which amount, we believe, is adequate for the purpose intended.

ACCORDINGLY, the judgment under review is hereby modified, and the liquidated damages awarded thereunder is hereby reduced to P10,000.00. The rest of the judgment is affirmed.

No costs.

SO ORDERED.

Teehankee, Acting C.J., Plana, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

[1] Resolution, March 3, 1975, p. 66, Rollo.

[2] Private Respondent's Brief, p. 3.

[3] Pp. 4-5, Decision, pp. 26-27, Rollo.

[4] p. 7, Decision.

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