

## **BAN KEE TRADING, INC., PLAINTIFF-APPELLEE, VS. DIVERSION FOODS, INC., DEFENDANT-APPELLANT.**

Ponente: DE LOS SANTOS, J.

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### **DE LOS SANTOS, J.:**

On appeal to Us is the decision dated September 17, 2004 of the Regional Trial Court, Branch 100 of Quezon City in Civil Case No. Q-02-47990, the dispositive portion of which is as follows:

“WHEREFORE, premises considered, judgment is hereby rendered for the plaintiff and against the defendant. The latter is ordered:

- to comply with its obligation by accepting delivery by the plaintiff of the remaining Twelve Thousand Five Hundred (12,500) pieces of pokemon toys:
- to pay the following:
  - P500,000.00 for the unpaid balance of the contract price, plus interest at 6% per annum counted from 25 June 2002 until full payment; and
  - P60,000.00 as attorney’s fees.

SO ORDERED.” (Record, p. 143)

On October 14, 2002, plaintiff filed a complaint for specific performance, collection of sum of money and damages against defendant corporation. In particular, plaintiff asked that defendant be ordered to accept delivery by plaintiff of the balance of 12,500 units of its order of Pokemon toys, and to pay the plaintiff the unpaid balance of the agreed contract price, plus interest thereon and damages.

Defendant in its answer filed on January 13, 2003 admitted that it issued a purchase order for 50,000 pieces of Pokemon toys from plaintiff at P20.00 each; that the toys would be delivered over a period of 6 months in 4 batches of 12,500 pieces each; that after the first 2 deliveries, defendant wrote to cancel all further deliveries and to ask that its order be deemed already fully served at the reduced quantity of 25,000. Plaintiff, however, refused defendant's request and managed to serve the third delivery of 12,500 pieces despite contrary advise from the defendant, although it was unable to serve the fourth and final batch.

The issues having been joined with the filing of the answer, both parties filed their pre-trial briefs, and the pre-trial conference was set on February 27, 2004. For failure of the defendant's representative and counsel to appear thereat, the court granted plaintiff's motion to present its evidence ex parte. Defendant moved twice for reconsideration of the said order, but the court was unmoved.

At the ex parte hearing held on 30 March 2004, plaintiff presented Marvie Samala, its marketing manager, who testified and identified its documentary proofs marked Exhibits “A” to “M”, including sub-markings. Plaintiff's evidence is summarized in the appealed decision, as follows:

“Through a letter under date of 2 February 2001, plaintiff offered to sell Pokemon toys as premium items for

giveaways or merchandise items of Carl's Jr., a chain of restaurants owned by the defendant. To this, Mr. Efren M. Sevilla, the marketing manager of the defendant, sent a counter-proposal with the following order scheme: defendant shall issue a P.O. for 50,000.00 pieces at P20.00 each; delivery shall be staggered, at minimum increments of P10,000 pieces per delivery; payment shall be made on actual delivery, COD 7 days; and total P.O. quantity shall be drawn within 6 months. On 2 May 2001, the defendant issued a Purchase Order No. 1011 for 50,000 pieces of assorted Pokemon toys at P20.00 each payable in fifteen (15) days after delivery. Plaintiff made two deliveries of 12,500 pieces sometime in June of 2001 which the defendant paid. After the two deliveries, Mr. Silva sent a letter to the plaintiff requesting for a reduction of its pokemon order to 50% of the volume ordered in the P.O. 1011 for the reason that the sale of the toys as promotional merchandise remained below defendant's targets. However, the plaintiff replied that it cannot agree to said request. Plaintiff countered that it agreed to a lower price of P20.00 per piece only because of the volume of 50,000 pieces which the defendant committed to purchase. Furthermore, the toys cannot be sold by the plaintiff anymore on retail because the toys were all repacked based on defendant's specifications. Sometime in October 2001, plaintiff delivered the third batch of Pokemon toys to the defendant consisting of 12,500 pieces. After the delivery of the third batch of toys, Ms. Samala had a telephone conversation with Ms. Gigi Lucas, the purchasing officer of Carl's Jr. and the latter said that defendant will not be accepting delivery of the fourth and last batch of toys. Plaintiff and the defendant had a series of correspondence reiterating the latter's request to which plaintiff disagreed. On 25 June 2002, plaintiff, through counsel, set a letter to the defendant demanding the payment of the unpaid balance of P500,000.00 plus interest. However, despite demand, the defendant did not comply with its obligation to the plaintiff. By reason of such refusal, the plaintiff engaged the services of a law firm to recover the unpaid obligation of the defendant and thereby incurred expenses relative thereto.

(Decision, pp. 2-3, Records, pp. 140-141)

The trial court defined the issue as "whether or not the defendant can unilaterally reduce the volume and refuse delivery of the ordered toys despite a specific agreement on the quantity of toys to be delivered." It then ruled that defendant could not, since the parties had a valid contract of sale, wherein the plaintiff was obliged to deliver 50,000 pieces of Pokemon toys over a period of six (6) months in several batches. Reciprocally, defendant had the obligation to accept delivery and pay plaintiff P20.00 per toy delivered within fifteen (15) days from delivery.

In holding that defendant was bound to comply in good faith with its obligation under the contract, the trial court cited Article 1159 of the Civil Code which provides that a contract once perfected has the force of law between the contracting parties, which they are bound to comply with in good faith. "This means that neither party may unilaterally and upon his own exclusive volition escape his obligation under the contract," and the fact that there remains a sizable unsold inventory of toys from the previous deliveries does not justify defendant's refusal to accept full delivery and to pay the complete price thereof.

The court quoted the case of *LTB Company vs. Manabat*, 58 SCRA 650, 659-660), which states that:

"Where a person by his contract charges himself with an obligation possible to be performed, he must perform it, unless the performance is rendered impossible by the act of God, by the law, or by the other party, it being the rule that in case the party desires to be excused from the performance in the event of contingencies arising, it is his duty to provide therefor in his contract. Hence, performance is not excused by subsequent inability to perform, by unforeseen difficulties, by unusual or unexpected expenses, by danger, by inevitable accident, by the breaking of machinery, by strikes, by sickness, by failure of a party to avail himself of the benefits to be and under the contract by weather conditions, by financial stringency or by stagnation of business. Neither is performance excused by the fact that the contract turns out to be hard and improvident, unprofitable or impracticable ill-advised, or even foolish, or less profitable or unexpectedly burdensome."

On appeal to us, defendant faults the trial court for committing the following errors, to wit:

“I

WHEN DEFENDANT-APPELLANT'S MOTION FOR RECONSIDERATION AND SECOND MOTION FOR RECONSIDERATION WERE DENIED BY THE COURT A QUO, THE DEFENDANT-APPELLANT WAS DEPRIVED OF ITS DAY IN COURT EQUIVALENT TO DENIAL OF DUE PROCESS.

“II

THE PURCHASE ORDER UPON WHICH PLAINTIFF-APPELLEE BASED ITS CLAIM CONSTITUTES A MERE OFFER WHICH IS UNACCEPTED UNTIL PLAINTIFF-APPELLEE'S ACTUAL AND COMPLETE DELIVERY OF THE ITEMS.” (Rollo, p. 18)

The appeal is devoid of merit.

Defendant-appellant argues that the trial court's denial of its motions for reconsideration of its order allowing the plaintiff to present its evidence ex-parte deprived it of its day in court and denied it due process, which is a fundamental right enshrined in our judicial system. “Due process enjoins courts to afford every party litigant ample opportunity to adduce evidence for his defense, by every and all efficient means allowed by law, in order to ascertain expeditiously and objectively the true facts in each case.”

In its aforesaid motions, defendant pleaded leniency by the court by citing Section 6, Rule 1 of the Rules of Court which enjoins “a liberal construction of the Rules to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.” It claims that its non-appearance at the scheduled pre-trial conference was due to the fact that his lawyer, Atty. Paulo A. Talban, had resigned 10 days earlier, on February 17, 2004, “without an opportunity to endorse to Defendant the hearing schedules of the cases he used to handle.”

Defendant further maintains that had it been allowed to participate in the trial proceedings, it would have been able to interpose its meritorious defenses which would militate against the court's conclusion that the parties' contract was a perfected sale. It would have been able to convince the court that what the parties had agreed consisted merely of a standing offer by plaintiff-appellee which was not accepted by defendant until plaintiff's actual and complete delivery of the items ordered.

What the facts are which constitute its claimed meritorious defenses, the appellant did not bother to say, and it is safe to dismiss them as mere conclusions of fact. Indeed, defendant's Answer contains such material admissions that a judgment on the pleadings could even be rendered already.

Apparently the only defense that appellant could proffer is that it asked appellee to cancel the remaining deliveries, notwithstanding a perfected contract. In its brief (page 17), appellant expresses the belief that a purchase order is “simply a document authorizing the seller to deliver goods with payment to be made later. It constitutes an offer which is accepted when the vendor supplies the quantity and quality ordered (Black's Dictionary, 5th Edition, page 111). Thus pending actual delivery of the goods in the quantity and quality ordered, the person ordering may cancel the undelivered items inasmuch as the offer tendered insofar as said items are concerned is not yet deemed accepted. [Corollarily], the contract is not yet perfected.”

Appellant cites the case of *Luxuria Homes, Inc. vs Court of Appeals*, 302 SCRA 315 in support of its argument that “anytime prior to the perfection of a contract, unaccepted offers and proposals remain as such and cannot be considered as binding commitments, hence not demandable.”

Appellant begs the issue, for plaintiff's offer and its counter-offer, coupled with subsequent actual, albeit partial, delivery no doubt signified a closed deal. The series of negotiations and events as found by the court bear the hallmarks of a perfected contract of sale. In its letter dated 2 February 2001, the plaintiff first offered to sell Pokemon toys to defendant as premium items for giveaways or merchandise items of Carl's Jr., a chain of

restaurants it owned. In turn, the defendant through Mr. Efren M. Sevilla, its marketing manager, made a counter-proposal, as follows: Defendant would issue a Purchase Order for 50,000.00 pieces at P20.00 each, with the delivery to be staggered over six (6) months, with 10,000 pieces per delivery minimum, and payment would be made 7 days after each delivery. Plaintiff agreed to a lower unit price of P20.00 because of the volume order of 50,000 pieces which defendant committed to buy. These toys could not be sold by retail anymore because they had been repacked to defendant's specifications.

On 2 May 2001, the defendant issued to plaintiff Purchase Order No. 1011 for 50,000 pieces of assorted Pokemon toys at P20.00, to be delivered in several batches and payable 15 days after each delivery. Defendant thus amended its original counter-offer by extending the payment period from 7 days to 15 days. When the first delivery of 12,500 pieces was made on June 27, 2001, the plaintiff in effect accepted the amended counteroffer, and at that point the contract of sale for the 50,000 pieces was perfected.

A sale is a contract whereby the seller obligates himself to deliver and to transfer ownership of a thing to the buyer, for a price certain. Article 1458 of the Civil Code provides:

“By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

“A contract of sale may be absolute or conditional.”

In a contract of sale, the title to the property passes to the vendee upon the delivery of the thing sold. This is distinguished from a contract to sell wherein ownership is by agreement reserved in the vendor and is not to pass to the vendee until full payment of the purchase price. (Chua vs. Court of Appeals, 401 SCRA 54.) The case before us does not provide for reservation in the vendor of the title until payment of the price by the vendee, since the title to the toys passed to defendant upon delivery, and thenceforth it was fully free to dispose of the toys and pass title thereto to its patrons or customers. Only defendant's obligation to pay the price remained, in view of the credit term of 15 days from delivery given to it.

Article 1497 of the Civil Code provides that the thing sold shall be understood as delivered when it is placed in the control and possession of the vendee, and delivery may be actual or constructive (see Article 1477 of the Civil Code). Under Article 1582, the buyer is bound to accept delivery and to pay the price of the thing sold at the time and at the place stipulated in the contract. And although Article 1583 permits the buyer not to accept delivery by installments, the same article provides that the parties may agree otherwise, as in fact they did in this case.

But despite a perfected contract, the buyer can still refuse a delivery, in case of violation by the seller of the implied warranties. Under Articles 1547, 1561, and 1562 of the Civil Code, every contract of sale is under an implied warranty: 1) on the part of the seller that he has a right to sell the thing at the time when the ownership is to pass, and that the buyer shall from that time have and enjoy the legal and peaceful possession of the thing; 2) that the thing shall be free from any hidden faults or defects, or any charge or encumbrance not declared or known to the buyer. The delivery or portions thereof maybe refused due to hidden defects, but not because there is no perfected contract of sale, as the appellant would insist.

If then ownership has passed to the buyer, and he wrongfully neglects or refuses to pay for the goods according to the terms of the contract of sale, the seller may maintain an action against him for the price of the goods (Article 1595, Civil Code). Or if the buyer refuses to accept delivery and to pay for the goods without valid cause, the seller may maintain an action for damages, the award to be based on an estimate of the loss sustained directly and naturally by the seller in the ordinary course of events caused by the buyer's breach of contract.

WHEREFORE, premises considered, the appealed decision is AFFIRMED.

**SO ORDERED.**

Lampas Peralta and Dimaranan Vidal, JJ., concur.

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