

**NIEVES P. ATIENZA, ASSISTED BY HER HUSBAND J. ATIENZA,
PLAINTIFF AND APPELLANT, VS. PHILIPPINE CHARITY
SWEEPSTAKES OFFICE, DEFENDANT AND APPELLEE.**

G.R. No. L-4010. November 29, 1951

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Plaintiff brought an action in the Court of First Instance of Manila to recover the sum of P3,000, plus interest, representing the prize she claimed to be entitled to as seller of the winning ticket in the sweepstakes draw held on April 27, 1947.

On or before February 27, 1947, an application contract was signed by the plaintiff and the defendant whereby the former became an authorized agent of the latter in the sale of sweepstakes tickets. Paragraph 7 of said contract provides in substance that the agent will be awarded the prize given to a seller if she sells a ticket winning any of the major prizes provided that she shall have purchased from the defendant five booklets of tickets before the closing date of the sales of tickets of each draw. According to paragraph 2, rule III, of the rules and regulations of the defendant, which were made part of the contract, the sale of tickets shall be closed fifteen (15) days prior to the holding of each sweepstakes draw. On February 27, 1947, plaintiff bought from the defendant two booklets of tickets for the draw to be held on April 27, of the same year, and on March 13, 1947, she again bought two additional booklets. About March 31, 1947, plaintiff requested some of the authorized field inspectors of the defendant to sell her additional booklets, but she was told that there was no more available for sale, whereupon she wrote on the same date to the defendant inquiring for additional booklets and she got the same answer. She was told that all booklets had been sold out. When the draw was held on the scheduled date, one of the tickets purchased by the plaintiff won the second prize of P50,000, for which a prize of P3,000 is awarded to the agent selling the ticket. When plaintiff demanded that this prize be paid to her in accordance with the contract, defendant refused. Hence this action.

The case having been submitted on an agreed statement of facts, the court rendered judgment dismissing the complaint with costs. The case is now before this Court on appeal taken by the plaintiff.

The contract signed by the plaintiff and the defendant relative to the sale of sweepstakes tickets by an agent to the public clearly provides that in order that the agent may be entitled to an award corresponding to the winning ticket of any major prize it is necessary that, besides winning the major prize, the agent "shall have purchased from the Sweepstakes Office or its authorized representatives no less than five (5) booklets of tickets before the close of the sales of tickets each draw." In other words, two requisites must be complied with: (1) any of the tickets purchased must win a major prize; and (2) the agent must have purchased "five (5) booklets of tickets before the close of the sales of tickets each draw". These are conditions precedent. They must be fulfilled before an agent may be entitled to the corresponding award. As the facts show that plaintiff only purchased four (4) booklets on two different occasions, it is evident that she is not entitled to the award corresponding to the winning ticket.

But plaintiff contends that if she failed to purchase the additional one booklet of tickets is not due to her fault or negligence but rather to the fault of the defendant because she made every effort to buy said additional booklet which was frustrated by the defendant. Thus, on one occasion, she contacted some authorized field agents of the defendant from whom she asked for more additional booklets but she was told that all had been sold out. She also contacted the office of the defendant inquiring for more booklet and was given the same answer. And all these efforts she had exerted long before the expiration of the fifteen-day period preceding the holding of the draw as provided for in the contract. She can, therefore, be considered as having substantially complied with the contract and, as such, is entitled to the award of P3,000.

We cannot agree to this line of reasoning much as we sympathize with the plight of the plaintiff. There is nothing in the agreement of the parties, nor in any rule or regulation which was made part thereof by reference, which imposes upon the defendant the obligation to sell to its agents more booklets of tickets at any time before the period of fifteen days preceding the draw even if the quota of tickets for that particular draw has already been exhausted. The statement in the regulation that the sale of tickets "shall be closed fifteen (15) days prior to the holding of each sweepstake" only means that when that time comes the defendant will no longer be bound to sell any ticket to any agent or to the public even if there is still some ticket available, a requirement which was found necessary in order that the sweepstakes office might make the necessary adjustment in the major prizes should the quota of tickets fixed for the draw be not completely sold. But it does not mean that the sweepstakes office can be required to sell more tickets prior to that period even if all the available tickets have been sold out. Under the contract, it was the duty of the plaintiff to buy five booklets if she wanted to win the awards offered by the defendant prior to the closing date of the sales of the tickets. She knew, as it is to be expected, that the tickets may be sold out in no time and must have taken the necessary precaution to insure her acquisition of the required number of tickets. This is her own lookout. If she fails to take this precaution and the tickets are all sold out before the closing date, she alone can be blamed. This is the only reasonable interpretation that can be given to the requirement of the contract that the agent must purchase "no less than five (5) booklets of tickets before the close of sales of tickets each draw".

We have noticed that, aside from the explicit requirement contained in the regulation that the sale of tickets shall be closed fifteen days prior to the holding of each sweepstake, the office of the defendant has taken the precaution of issuing press releases to the newspapers advising every interested party that "only a few booklets for the April 27, 1947 Draw remained before the full authorized quota of P1,500,000 is reached" and warning that "no additional tickets * * * will be printed," at the same time advising "authorized sellers to buy their tickets early, either to cover the required quota of five booklets or to have a sufficient amount of tickets for their patrons after the source of supply in the Sweepstakes Office has been exhausted", which press releases were published in the Sunday Times and other publications before March 19, 1947. This appears to be the practice adopted by that office for the convenience of all its agents. Plaintiff, as one of the authorized agents, cannot ignore this practice, nor be oblivious of the press releases. Her excuse that they cannot bind her because they were made not in pursuance of any provision of law cannot merit any serious consideration.

Another contention of the plaintiff is that it was the duty of the defendant to print additional quota of tickets after it has been apprised that all the available tickets had been sold out and some agents had not yet bought the required quota. We cannot see how this claim can be entertained in the light of the contract executed between the plaintiff and the defendant. In the first place, there is nothing therein which imposes upon the defendant an obligation to print additional tickets if the required quota had been exhausted before the closing date of the sale of tickets. The obligation assumed by the defendant to give award to an agent who sells a winning ticket is contractual. And in the second place, section 3, of Act No. 4130, as amended, gives to the defendant discretion to fix the number of tickets that should be printed for each draw. The question whether additional tickets should be

printed or not is therefore a matter that is addressed solely to the discretion of the defend-ant. The charge of bad faith hurled by the plaintiff against the defendant in connection with an attempt to print an additional quota of tickets has no foundation in fact, it appearing that such attempt was not carried out "in view of the need of putting out the tickets for the Independence sweepstakes as early as possible", and not to prejudice the plaintiff. This charge is completely de-void of merit.

Wherefore, the judgment appealed from is affirmed, with costs against the appellant.

Paras, C.J., Feria, Pablo, Bengzon, Padilla, Tuason, Reyes, and Jugo, JJ., concur.

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