

OPERATORS INCORPORATED, PETITIONER, VS. AMERICAN BISCUIT CO. INC., RESPONDENT.

G.R. No. L-34767. October 23, 1987

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

These appeals, by certiorari, are the result of a three-cornered controversy involving the American Biscuit Company, Inc., the Operators Incorporated, and the Associated Biscuit, Inc., in connection with the operation of American Biscuit's business by Operators and Associated. The trial court dismissed the claims of the parties against each other. The Court of Appeals rendered a modified decision condemning Associated to respond with certain damages. Notwithstanding such a modification, all three parties came to this Court on separate petitions.

We consolidated the three cases and gave due course thereto.

The facts, as found by the Court of Appeals,* are not disputed:

xxx xxx xxx

"From the evidence adduced by the parties, it appears that plaintiff American Biscuit Company was, before World War II, a manufacturer of biscuit, candy and bubble gum products. After the liberation, it reopened its candy department. Financial difficulties and reverses, however, forced it to discontinue its business operations.

To bail itself out of this financial distress, plaintiff, on September 26, 1953, entered into an agreement with defendant Operators, Inc. Under this agreement, it ceded the entire, total and complete present operation of its business to defendant Operators, Inc., in consideration for which Operators, Inc. undertook to answer for existing obligations of the plaintiff to its several creditors and to compensate plaintiff with a percentage of the gross profits realized in the course of its operations. Insofar as are pertinent to this case, the terms of this agreement, otherwise known as the Operating Contract, provides as follows:

'1. ABC gives, grants and cedes the entire, total and complete present operation of the ABC unto the OPERATOR and the OPERATOR in turn agrees and accepts to operate said business of the ABC;

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'6. This contract shall remain in full force and effect for a period of ten (10) years extendable to another ten (10) years at the option of the OPERATOR herein; and any breach of the terms and conditions of this agreement, the suspension, cancellation, or desistance on the part of the ABC with respect to the continuance of this operating contract shall render the latter liable for damages unto the OPERATOR in a sum not less than P300,000.00 by way of liquidated damages, besides other damages that may be demandable and such further sums as by then the OPERATOR may have disbursed on account of the indebtedness of the ABC recoverable with twelve (12%) per centum interest per annum;

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'10. That as aforesaid the ABC is presently indebted in the sum of P220,000.00 more or less and that the ABC hereby gives full power and authority unto the OPERATOR to settle said obligations through partial payments and discounts;

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'12. ABC shall receive from the gross profits realized by the OPERATOR an amount equivalent to TWENTY (20%) per cent, the remaining EIGHT (80%) per cent to be the property of the OPERATORS;

The 20% herein set aside for the ABC shall however be first used to amortize any and all advances, payments and disbursements made by the OPERATOR on account of the ABC's obligations as under this contract to be advanced, paid and disbursed by the OPERATOR, whatever shall be remaining after deducting said amortization shall be delivered to the ABC;

IT BEING UNDERSTOOD, that the 20% herein reserved for the ABC shall be increased to 30% leaving 70% to the OPERATOR as soon as the OPERATOR has fully reimbursed itself from the disbursements which it has made in payment of the indebtedness of the ABC and of other items herein mentioned.

'13. Should any difference or disagreement arises between the parties hereto on the meaning or effect of this contract or any clause thereof, or in respect to the amount of percentage accruing to both parties, such difference or disagreement shall be referred to a Board of Arbitrators to be composed of one arbitrator appointed by the ABC,

'one by the OPERATOR, and a third to be selected by the two aforementioned arbitrators, the decision of said arbitrators to be binding among the parties herein in so far as the same is permitted by law. No action shall be instituted in any court by any party hereto arising out of any such difference or disagreement, unless the same shall have been submitted to said Board of Arbitrators, and any such action shall be based only upon the award so obtained.' (Operating Contract, Exh. A; Exh. 9-Associated).

On June 12, 1954, or barely 10 months thereafter, plaintiff and Operators, Inc., entered into another agreement, this time with defendant Associated Biscuit Operators, Inc., with the consent of plaintiff, who was a formal party thereto. In this agreement, known as the Tripartite Agreement, Associated agreed to engage in the manufacture and marketing of the biscuit products of American Biscuit Company, Inc., under the terms and conditions of the Operating Contract of September 26, 1953. This Agreement in turn, among others, contains the following pertinent covenants and stipulations:

'1. Grant of Right.

The American Biscuit Co., Inc., with full knowledge and consent of the Operators Incorporated, hereby grants unto the Associated Biscuit Operator's Inc., the exclusive and irrevocable right to manufacture and market the biscuit products of all kinds and denominations of said American Biscuit Co., and for such quality and quantity and during the period hereinbelow specified, subject to the same terms and conditions, stipulations and agreements contained in the contract between the American Biscuit Co., inc., and the Operators Incorporated of September 26, 1953 and the further agreements and stipulations hereinbelow stated.

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'4. Capitalization.

The sum of TWO HUNDRED THOUSAND PESOS (P200,000.00) minimum will be spent by the Associated Biscuit Operators, Inc. exclusively for the manufacture and marketing of biscuit products, the construction of buildings and improvements and the purchase of machineries, equipments, appliances, furnitures and fixtures

needed and necessary and required for the biscuit business subject of this contract, the Associated Biscuit Operators Inc. representing hereby that it will invest any and all other capital necessary should circumstances so demand;

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'6. Machineries and Equipments

All machineries, appliances, equipment, furnitures and fixtures and any all that may be necessary and required for the business operation provided for under this contract shall be acquired and purchased by the Associated Biscuit Operators Inc., at their own expenses and for their own account without any charges whatsoever against the American Biscuit Co., Inc.;

The Associated Biscuit Operators Inc., shall keep said machineries, equipments, appliances, furnitures and fixtures insured and in the event of their destruction by fire or otherwise, the Associated Biscuit Operators, Inc., shall immediately replace the same for purposes agreed upon under this Contract;

'7. Operation.

The Associated Biscuit Operators Inc. shall commence operation as agreed upon under this contract and by virtue hereof within SIX (6) MONTHS after dollar allocations have been granted to the Associated Biscuit Operators Inc., and/or the American Biscuit Co., Inc., and the purchase and importation of necessary machineries and equipments;

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'9. Allowances.

(A) Upon signing of this agreement, the Associated Biscuit Operators Inc., shall advance to the American Biscuit Co., Inc., the sum of ONE THOUSAND FIVE HUNDRED PESOS (P1,500.00) and every month(s) thereafter during the existence of this contract, a minimum allowance of FIVE HUNDRED PESOS (P500.00), which may be increased from time to time as the parties hereto may agree;

(B) It shall be the obligation of the Associated Biscuit Operators Inc. to share equally with the Operators Incorporated in the payment of any and all obligations and expenses in connection therewith of the American Biscuit Co., Inc., existing as of September 26, 1953 and as stipulated in the agreement of the same date, deductible, however, from the American Biscuit Co., Inc.'s participation as hereinbelow stipulated.' (Exh. B; Exh. 10-Associated).

"On June 17, 1954, or 5 days after the conclusion of the Tripartite Agreement, the defendants, Operators and Associated, entered into an agreement in application of their right(s) and obligations acquired under the terms of the foregoing agreements. The defendants agreed-

'1. That the Associated Biscuit Operators Inc., shall be entitled to the same right and privileges acquired by the Operators Incorporated under the original contract. It is understood and agreed that the Associated Biscuit Operators Inc., shall have full and exclusive control and supervision over the management of its business affairs.

`2. That as provided for in Paragraph 6 of the original contract, this agreement shall remain in full force and effect for a period of TEN (10) YEARS extendible for another period of TEN (10) YEARS at the option of the Associated Biscuit Operators Inc.

'3. That any building or buildings that may be constructed, and any and all machineries, equipments, furnitures and fixtures that may be installed therein, by the Associated Biscuit Operators, Inc., shall remain the property of

said corporation, subject only to the right of the American Biscuit Co., Inc., to acquire and purchase the same as provided for in the original and supplementary contracts.

'4. That immediately upon the signing of this agreement, the Associated Biscuit Operators Inc., shall pay unto the Operators Inc., FIFTY (50%) PER CENTUM of any and all advances and payments made by the latter for the account of the American Biscuit Co., Inc., prior to the signing of this contract: and, thereafter, as provided for in the supplementary contract, the Associated Biscuit Operators Inc., shall pay and deliver unto the Operators Incorporated FIFTY (50%) PER CENTUM of the monthly cash advances and payments to be made for the account of the obligations of the American Biscuit Co., Inc., still remaining unpaid.

'5. That the Associated Biscuit Operators Inc., hereby further agrees with the Operators Incorporated to pay the latter FIFTY (50%) PER CENTUM of the monthly cash advance of ONE THOUSAND (P1,000.00) PESOS, Philippine Currency, payable to the American Biscuit Co., Inc., under paragraph 7, subparagraph 3 of the original contract and another FIFTY (50%) per centum of the FIVE HUNDRED (P500.00) PESOS monthly cash advance to the American Biscuit Co., Inc., as provided for in sub-paragraph A of paragraph 9 of the supplementary contract; it being understood that the remaining FIFTY (50%) PER CENTUM of the aforesaid FIVE HUNDRED (P500.00) PESOS monthly cash advance shall be paid by the Operators Incorporated to the American Biscuit Co., Inc.

'6. That in the construction of the factory or any other building, the Associated Biscuit Operators Inc. shall leave unoccupied certain space on the lot, where said factory or building shall be built, for the use and occupation of the Operators Inc. Such vacant space to be reserved shall be determined by the parties hereto before the start of the construction of the factory or building.

'7. That the Associated Biscuit Operators Inc., shall be entitled to the use and occupation of FIFTY (50%) PER CENTUM of American Biscuit Co., Inc. building at the factory site presently occupied by the Operators Incorporated, including such furniture, fixtures and rolling equipments owned by the American Biscuit Co., Inc., which are presently in the possession of, and are being used by, the Operators Incorporated. (Exh. II-Associated).

"Meanwhile, after the conclusion of the original operating contract between ABC and Operators Inc., it appears that Operators Inc. commenced with its operations in the manufacture of plaintiff's chiclet and bubble gum products, utilizing for this purpose the plaintiff's site and establishment. In December, 1954, Eu C. Leh became the general manager of Operators Inc. Leh reorganized the Operators Inc., improving the quality of the chewing gum which it was manufacturing. For this purpose, Operators Inc. took over the machinery used for the manufacture of chewing gum only, such as gum cutter, mixer, pulverizers and moving fans.

"In March 1955-i.e., some eight (8) months after the conclusion of the Tripartite Agreement-it appears that differences had arisen between the two defendants on the utilization of plaintiff's establishment and equipment. A conference was held in plaintiff's premises in Paranaque, upon the instructions of its president, Mr. Jorge Vargas. In the said conference, Operators Inc. was represented by Eu C. Leh, Judge Rafael Dinglasan and Go Khe Bing. President for Associated were Juan Wong Locsin, its president; Yan Won Can, its manager; and Atty. Demetrio Salem. In said conference the parties agreed to divide the factory building into two portions, the northern-portion having been assigned to Operators Inc. and the southern portion to Associated. The parties also divided the ABC's facilities, equipment and furniture. The Chevrolet truck was assigned to Operators and the Fargo panel was turned over to Associated. The machinery, however, which was only for the manufacture of chewing gum, was assigned to defendant Operators. The arrangement was approved by the plaintiff. Associated Biscuit was allowed the use of the sugar pulverizer, the water pump and the airconditioning facilities, on condition that it would pay the expenses of maintenance, before the arrival of its own machinery. After the foregoing division of factory premises,

equipment and furniture, the parties took possession of their respective shares. "Operators continued with its manufacture of chiclet and chewing gum. Associated commenced its manufacture of biscuits with the machinery it had imported from Hongkong, awaiting meanwhile the arrival of the machinery they undertook to import from their purpose from the United States thru the dollar allocation secured from them by the American Biscuit.

"Meanwhile also, since the two defendants-Operators and Associated-had both undertaken to pay ABC's obligation, owing to its various creditors-accounts which had been outstanding before the entry into the agreements-and which, in fact, were the motivating factors for the entry of the plaintiff into the operating agreements-arrangements were made between the parties with the China Banking Corporation whereby the defendants would share fifty-fifty in the payment by monthly installments of the P110,000.00 unpaid balance of the loan by the bank to plaintiff (Exh. 3-A-Operators). This arrangement was religiously complied with by Operators Inc. which paid P1,500.00 monthly, making a total payment of more than P100,000.00 including interest. Defendant Associated in turn, failed to make good its commitments to pay its share of P55,000.00.

"As a result of Associated's failure to observe its commitments towards the liquidation of ABC's pending accounts, China Banking Corporation filed against plaintiff=Civil Case No. 37045 (Exhs. F, F-1, F-2, F-3; Exh. 4-Operators). This case was again dismissed on joint motion of the parties, upon the undertaking of Operators Inc., to pay the obligations with the approval of Mr. Jorge Vargas. Operators Inc. thus fully complied with its obligation under the contracts, and then plaintiff, in October 1963, upon the termination of the operating contracts, entered into a contract of lease (Exh. 14-Operators) with Operators Inc., for the continued use of the premises and the equipment of the plaintiff for another term of 10 years, renewable for the same period. It also appears that in August 1958 Chua Tee re-filed the original cases filed in the Court of First Instance of Rizal, i.e., Civil Cases Nos. 5123 and 5124 (Exhs. G and sub-parts and K and sub-parts).[1]

In addition, the Court of Appeals observed:

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x x x [I]t is true that Operators and Associated made periodical payments so as to partially satisfy the claims of the creditors, but they were not enough; the creditors were not satisfied, that was why on 23 June, 1955, Exh. P, American Biscuit asked Operators and Associated to wake up and warned them of rescission, and Associated, which was the party that had failed to perform, replied in Exh. 1 Associated that,

"we wish to inform you that the settlement of the obligation of the China Banking Corporation is under negotiation with said bank and we are just waiting for the action of the Board of said Bank on our proposal."

but nothing tangible came out of that, so much so that on 23 August, 1955, a three cornered conference took place in the office of American Biscuit, from which will be seen that American Biscuit confessed its plight with China Banking unto both Associated and Operators, and therefore warned of rescission, see tsn. Exh. Y; x x x [2].

2nd. - Again, under Exh. A in connection with Exh. B, Associated had bound itself to pay to American Biscuit as monthly advances, the sum of P500.00 a month from July, 1954, par. 9, Exh. B, as well as binding itself solidarily with Operators to advance the monthly overhead of P1,000.00, par. 7, Exh. A; this was demanded from Associated not only in the latter, Exh. P of 23 June, 1955, but more emphatically in the conference, the tri-partite conference, on 23 August, 1955, Exh. Y, again according to Exh. AA and AA-1 and as admitted by Juan Locsin Wong, Associated's witness, Associated paid only up to February, 1955 and this only in October, 1955; x x x [3]

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x x x [I]t is not denied that Associated removed a Hudson Sharp Biscuit Cracker Wrapper and a Sandwich

Machine on 19 and 24 June, 1957, as well as a cutting machine and a mixer, having sold the Hudson Biscuit Cracker and the Sandwich Machine to one Kong Nian of Cebu, Exh. 12 and 13 Associated; representing them to be;

"free from all liens and encumbrances", most contrary to par. 6 of Exh. B that had made them partial securities in favor of American Biscuit; x x x[4]

Amid this setting, American Biscuit filed a complaint against Operators Incorporated and Associated Biscuit for the cancellation of the Operating Contract and the Tripartite Agreement, with prayers to put Associated Biscuit under receivership and for damages. The complaint alleged that there was a breach of the aforesaid agreements owing to the failure of Associated Biscuit to pay its share in American Biscuit's indebtedness to its (American Biscuit's) creditors, and the failure of Associated Biscuit to pay its share in the monthly overhead expenses of American Biscuit, in addition to the removal by Associated Biscuit of machineries used in the business. American Biscuit maintained that the payment of its indebtedness and of its overhead expenses was a joint and solidary obligation of Operators and Associated Biscuit.

Operators submitted in its answer that the Operating Contract had been novated by the Tripartite Agreement which allegedly severed its obligation from Associated Biscuit's own liabilities, and since it had fully complied with its obligations, American Biscuit had no cause of action against it. Operators counterclaimed for damages for alleged breach by American Biscuit of the arbitration provisions of the Tripartite Agreement by coming to court directly.

For its part, Associated Biscuit averred that it had paid a substantial portion of its obligations under the Tripartite Agreement and that it stopped payment only because American Biscuit had deprived it of its contractual share in the latter's dollar allocations. Associated Biscuit likewise submitted a counterclaim on the contention that it was American Biscuit that breached the Tripartite Agreement. It filed a cross-claim against Operators for the latter's alleged failure to comply with their agreement affording Associated Biscuit the right to half of American Biscuit's buildings, furniture, fixtures, and rolling equipment. Associated Biscuit likewise alleged that Operators had connived with American Biscuit in denying it of its share in the said dollar allocations.

As we said, the trial court dismissed the claims of all the parties against each other.

The Court of Appeals on the other hand, held:

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x x x [T]he final result must be that between American Biscuit and Operators, while Operators should be liable solidarily for breach of Exh. B by Associated, and must therefore together with Associated, pay unto American Biscuit the liquidated damages of P300,000.00, yet, American Biscuit must also be liable unto Operators for breach of the same contract in regard to the arbitration clause and be liable therefor for the same amount of P300,000.00, so that these claims will offset each other, but as to Associated, it having been so clearly shown to be the transgressor, it must respond unto American Biscuit in the liquidated damages of P300,000.00, but as these liquidated damages due to American Biscuit from Associated and Operators as solidary debtors are already offset by American Biscuit's liability to Operators for the same amount of liquidated damages by reason of American Biscuit's own breach of contract as against Operators, therefore American Biscuit can no longer recover from Operators nor Associated but as of the two solidary debtors, Associated and Operators, it was Associated that was solely at fault and had given occasion for American Biscuit to impose the liquidated damages, therefore, Operator should in turn be entitled to shift the responsibility therefor upon Associated, thus permitting it to recover from Associated the P300,000.00 it had offset against American Biscuit; and even as between Associated and

Operators, as there has not been shown any cause nor reason for Associated to complain against Operators, once, again under Art. 2208, this Court finds it only just to grant attorney's fees unto Operators therefor, which it will fix at P5,000.00;[5]

and ruled that:

IN VIEW WHEREOF, judgment will have to be as it is hereby modified so that a new one is dictated as follows: Associated is condemned to pay Operators the sum of P300,000.00 plus attorney's fees in the sum of P5,000.00 plus costs; and as against Associated, Exh. A and B are declared rescinded; costs of American Biscuit to be paid by Associated.[6]

In G.R. No. L-35024, Associated Biscuit submits the following:

ASSIGNMENT OF ERRORS

I

THE COURT OF APPEALS ERRED IN NOT HOLDING AMERICAN BISCUIT COMPANY, INC., LIABLE FOR BREAKING THE TEN-YEAR TERM OF THE TRIPARTITE AGREEMENT IN PLACING PETITIONER'S BISCUIT BUSINESS UNDER RECEIVERSHIP WITHOUT JUST CAUSE.

II

THE COURT OF APPEALS ERRED IN REVERSING THE CONCLUSION OF THE TRIAL COURT THAT PETITIONER'S USE OF THE PRODUCERS' DOLLAR QUOTA OF RESPONDENT AMERICAN BISCUIT COMPANY, INC. WAS A CONTRACTUAL RIGHT UNDER THE TRIPARTITE AGREEMENT.

III

THE COURT OF APPEALS ERRED IN REVERSING THE TRIAL COURT'S CONCLUSION THAT RESPONDENTS BROKE PETITIONER'S CONTRACTUAL RIGHT TO THE DOLLAR QUOTA AND ABSOLVING THEM FROM LIABILITY THEREFROM.

IV

THE COURT OF APPEALS ERRED IN JUSTIFYING RESPONDENTS' BREACH OF PETITIONER'S CONTRACTUAL RIGHT TO THE DOLLAR QUOTA BY HOLDING THAT PETITIONER HAD FAILED TO SATISFY THE CREDITORS OF AMERICAN BISCUIT COMPANY, INC. SINCE AUGUST, 1955.

V

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT PETITIONER HAD FULFILLED ITS OBLIGATIONS REGARDING THE INDEBTEDNESS OF AMERICAN BISCUIT COMPANY, INC.

VI

THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER VIOLATED THE TRIPARTITE AGREEMENT BECAUSE CHINA BANKING CORPORATION, CHUA TEE, AND CHUA TEE & CO., FILED SUITS AGAINST AMERICAN BISCUIT COMPANY, INC. IN AUGUST, 1958, INSTEAD OF CONDEMNING AMERICAN BISCUIT COMPANY, INC. TO PAY MORAL DAMAGES FOR ITS FRAUDULENT COMPLAINT.

VII

THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER'S DISCONTINUANCE OF ITS MONTHLY ALLOWANCE FOR OVERHEAD EXPENSES TO AMERICAN BISCUIT COMPANY, INC. AFTER FEBRUARY, 1955 WAS A BREACH OF THE TRIPARTITE AGREEMENT.

VIII

THE COURT OF APPEALS ERRED IN CONSIDERING AS A CONTRACTUAL BREACH PETITIONER'S DISPOSAL OF TWO PIECES OF EQUIPMENT, ALTHOUGH THE TRIAL COURT HAD NOT RULED ON THAT POINT AND THE LONE ASSIGNMENT OF ERROR THRUST IN BY AMERICAN BISCUIT COMPANY, INC. WAS ADMITTEDLY GENERAL OR NON-SPECIFIC.

IX

THE COURT OF APPEALS FURTHER ERRED IN NOT DECLARING THE RESCISSION OF THE CONTRACTS AT THE INSTANCE OF PETITIONER, WITH REIMBURSEMENT OF ITS ADVANCES AND DAMAGES, LIQUIDATED AND MORAL, PLUS LEGAL INTEREST.

X

THE COURT OF APPEALS ERRED IN DISMISSING PETITIONER'S CROSS-CLAIM AGAINST OPERATORS INCORPORATED AND CONDEMNING PETITIONER TO PAY IT P300,000.00 INSTEAD.

XI

THE COURT OF APPEALS ERRED IN ENTERTAINING RESPONDENTS' APPEAL OVER PETITIONER'S OBJECTIONS.[7]

Operators Incorporated, as the petitioner in G.R. No. L-34767, in turn assigns these errors:

I

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT UNDER THE OPERATING CONTRACT (Exh. A) AND THE TRIPARTITE AGREEMENT (Exh. B) DEFENDANT-APPELLANT OPERATORS INC. IS NOT ANSWERABLE OR RESPONSIBLE UNTO PLAINTIFF-APPELLANT AMERICAN BISCUIT CO. INC., IN SOLIDUM WITH DEFENDANT-APPELLANT ASSOCIATED BISCUIT INC., FOR THE LATTER'S MISFEANCES.

II

THE COURT OF APPEALS ERRED IN HOLDING THAT "DEFENDANT-APPELLANT OPERATORS INC., IS LIABLE FOR THE LIQUIDATED DAMAGES PRESCRIBED AT P300,000 IN PARAGRAPH 13 OF THE TRIPARTITE AGREEMENT (EXH. B).

III

THE COURT OF APPEALS ERRED IN NOT SENTENCING OR CONDEMNING PLAINTIFF-APPELLEE AMERICAN BISCUIT CO., TO PAY DEFENDANT-APPELLANT OPERATORS INC., THE SUM OF P300,000.00 BY WAY OF LIQUIDATED DAMAGES AND THE SUM OF P20,000 AS ATTORNEY'S FEES, UNDER PARAGRAPH 6 OF THE OPERATING AGREEMENT (EXH. A)[8]

And in G.R. No. L-35073, American Biscuit argues that:

I.

THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER'S "ACCUSATION OF BREACH" WAS, PURSUANT TO THE GOVERNING CONTRACTS, REFERABLE TO ARBITRATION, CONSIDERING THAT THE SAME IS BASED ON THE FAILURE OF DEFENDANT ASSOCIATED BISCUIT, INC. TO CARRY OUT THEIR TERMS AND CONDITIONS, ESPECIALLY ITS FAILURE TO SATISFY THE INDEBTEDNESS OF PETITIONER MENTIONED THEREIN, WHICH, UNDER SAID GOVERNING AGREEMENTS, EXPRESSLY GRANTS PETITIONER THE RIGHT TO FILE SUIT FOR THE CANCELLATION OR ABROGATION OF THE SAME.

IT IS NOT BASED ON ANY DISAGREEMENT AS TO THE MEANING OR EFFECT OF THE GOVERNING CONTRACTS OR ANY CLAUSE THEREOF OR IN RESPECT TO THE PERCENTAGE ACCRUING TO THE PARTIES, ANY OF WHICH CASES IS REFERABLE TO A BOARD OF ARBITRATORS UNDER THE SAME CONTRACTS.

II

PETITIONER AND DEFENDANT OPERATORS, INC. HAD NOTHING AT ALL REFERABLE TO ARBITRATION BECAUSE THEY HAD NO QUARREL WHATSOEVER AS BORNE OUT BY THE EVIDENCE ON RECORD AND AS EXPRESSLY NOTED BY THE COURT OF APPEALS IN ITS DECISION.

III

ASSUMING ARGUENDO THAT PETITIONER'S "ACCUSATION OF BREACH" WAS SUBJECT TO ARBITRATION, WHEN DEFENDANT OPERATORS FILED ITS ANSWER, ENTERED INTO TRIAL AND COMPLETED ITS EVIDENCE WITHOUT EVEN FILING A MOTION TO STAY THE PROCEEDING PURSUANT TO SEC. 7 OF REPUBLIC ACT 876 (ARBITRATION LAW) FROM THE FILING OF THE COMPLAINT ON 15 SEPTEMBER 1958 UP TO THE RENDITION OF THE LOWER COURT'S JUDGMENT ON 14 APRIL 1969, IT UNQUESTIONABLY WAIVED ITS RIGHT TO AVAIL ITSELF OF THE CONTRACTUAL ARBITRATION CLAUSE.

IV

IF THE COURT OF APPEALS CONSIDERS THE IMPOSITION OF P300,000.00 IN LIQUIDATED DAMAGES AGAINST PETITIONER AS FAIR, NOTWITHSTANDING THE FACT THAT OPERATORS, INC. WAIVED ITS RIGHT TO ARBITRATION, THEN FOR EACH AND EVERY BREACH OF ASSOCIATED BISCUIT, INC. THE COURT OF APPEALS SHOULD HAVE IMPOSED P300,000.00 LIKEWISE AS LIQUIDATED DAMAGES AGAINST IT AND IN TURN AGAINST OPERATORS, INC., BEING A SOLIDARY OBLIGOR.[9]

The threshold inquiry is whether or not the appeals (in the Court of Appeals) of American Biscuit and Operators Inc. should have been dismissed at the outset since they assigned no errors. There is no merit in this contention. In Miguel vs. Court of Appeals,[10] citing Cabrera vs. Belen,[11] we declared that:

x x x [A]ppellants need not make specific assignment of errors provided they discuss at length and assail in their brief the correctness of the trial court's findings regarding the matter. Said discussion warrants the appellate court

to rule upon the point because it substantially complies with sec. 7, Rule 51 of the Revised Rules of Court, intended merely to compel the appellant to specify the questions which he wants to raise and be disposed of in his appeal. A clear discussion regarding an error allegedly committed by the trial court accomplishes the purpose of a particular assignment of error.

As correctly noted by the appellate court, "an examination of the briefs of American Biscuit and Operators will show that while their assignments of error are really general, the bodies of their briefs are specific enough".[12]

We come to the principal issue.

The fundamental question is whether or not Associated Biscuit violated the terms of the Operating Contract and the Tripartite Agreement. On this question, both the trial and appellate courts were agreed that Associated Biscuit failed to comply with its dual contractual commitments of settling the financial obligations of American Biscuits and of paying its monthly overhead expenses. It is a finding that finds ample support in the evidence. The Court of Appeals pointed out that (1) on June 23, 1955, American Biscuit had asked Associated Biscuit and Operators, under pain of rescission of the contract, to satisfy the claims of its creditors, but in spite of assurances by Associated Biscuit, nothing tangible came about, leading to the tripartite conference of August 13, 1955. As a result, the parties arrived at an arrangement that obliged Associated and Operators to make a promissory note payable on March 13, 1957. But again, this was not paid; and (2) in both the letter of June 23, 1955 and the tripartite conference of August 23, 1955, American Biscuit demanded from Associated Biscuit the payment of the former's monthly overhead expenses but Associated made payments good only up to February, 1955, and the payment itself was made only in October, 1955. These are factual findings that bind this Court.[13]

We are not convinced with the following arguments of Associated Biscuit:

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x x x [S]hort of execution of judgments and consequent closure of the candy department, there could be no breach of paragraph 9 of the Operating Contract; and there had been neither judgment nor execution on those cases [filed by the creditors of American Biscuit against the latter] before American Biscuit Company, Inc., commenced [the instant case] Civil Case No. 37540 on or about September 12, 1958.[14]

The theory then, of Associated Biscuit is that paragraph 9 of the Operating Contract stipulating that:

9. The OPERATOR hereby agrees, guarantees and represents that it will at all times protect and safeguard the A B C from lawsuits arising from the claims of its present creditors by and through the payment and satisfaction of the latter's claims.

is violated only upon an actual execution of any judgment against American Biscuit and a physical takeover of the company's properties.

Such a stand is not only patently against the clear wordings of the Operating Contract, it is absurd. It should be observed that Associated Biscuit itself outlined in its brief that American Biscuit had entered into the Operating Contract at a time when its creditors had already commenced foreclosure proceedings upon its properties and at a time when its equipment and machineries were already in danger of being sold at public auction.[15] That was why Operators and Associated Biscuit, under paragraph 9 of the Operating Contract, obligated themselves to "protect and safeguard the ABC from lawsuits x x x by and through the payment and satisfaction of the [creditors'] claims." The "execution of judgments" and the "consequent closure of the candy department" were precisely the consequences American Biscuit had feared and foreseen, for which Operators and Associated Biscuit were made to assume the liabilities they now deny. Clearly, when there is insufficient payment, as

factually shown in the cases at bar, there is a violation of the Operating Contract.

For one of the essential ingredients of payment as a mode of extinguishing obligations is integrity, that is, the payment must be complete or full. Article 1233 of the Civil Code states: "A debt shall not be understood to have been paid unless the thing or service in which the obligation consists has been completely delivered or rendered, as the case may be."

Associated Biscuit cannot claim that its share in the dollar quota of American Biscuit is a contractual right. The fact is that, as found by the appellate court, American Biscuit did not refuse to share the quota with Associated Biscuit. Furthermore, in its very brief, Associated Biscuit avers:

Honoring the adjustments, American Biscuit Company, Inc. allowed petitioner to use half of its dollar quota as petitioner prepared to operate the biscuit department in 1955; and petitioner had enjoyed the quota equally with the Operators Incorporated until June 1957, when the quota was suspended by the Central Bank for failure of American Biscuit Company, Inc. to file the required production report.[16]

As the Court of Appeals correctly noted, after the Operating Contract and the Tripartite Agreement had gone into effect, American Biscuit went into inactivity, and since Operators and Associated Biscuit had then taken charge of the business, it was their foremost obligation to see that the production report was duly filed.

We agree with the Court of Appeals that Associated had failed to exercise due diligence with respect to the American Biscuit's quota allocations. It was a part of its contractual undertaking and its efforts were wanting in that regard. Moreover, even as Associated Biscuit was actually sharing in the quota allocations until June, 1957, it, as late as March, 1957, had continuously failed to satisfy the claims of American Biscuit's creditors and to pay the overhead expenses of the biscuit company. These are hard facts Associated Biscuit cannot now disavow by torture of the words of the contracts.

The position of Operators that under the Operating Contract and the Tripartite Agreement it is not answerable for the misfeasance of Associated, is belied by the very provisions of the Tripartite Agreement, thus:

10. Incorporating Clauses.

Paragraphs 9, 10, 11, the provisions on Board of Arbitrators, 14, 15, 16 and 17 of the contract of September 26, 1953 between the American Biscuit Co., Inc. and Operators Incorporated are hereby incorporated into this Contract by way of reference and made an essential part hereof; and the word 'OPERATORS' mentioned in said paragraphs is to be understood as to include the Associated Biscuit Operators Inc., for purposes of this Contract; and both the Operators Incorporated and the Associated Biscuit Operators Inc., in so far as liabilities and obligations therein contained in said paragraphs shall be made answerable to the American Biscuit Co., Inc., jointly and severally.[17]

There is thus no mistaking the fact that Operators and Associated had assumed, per their agreements, American's liabilities to its creditors in solidum.

Article 1207 of the new Civil Code states that: "there is a solidary liability when the obligation expressly so states x x x." [18]

What may have led Operators in denying the solidary character of its obligations was the fact that it was engaged in the manufacture of candy whereas Associated Biscuit was supposed to manufacture biscuits, and the fact that the two operators were required to invest different minimum amounts in the venture. But these conditions do not alter the solidary nature of their obligations as expressly provided. According to Article 1211 of the Civil Code, "solidarity may exist although the debtors may not be bound in the same manner and by the same periods and

conditions." [19] Accordingly, the disparity in their functions under the contracts does not vary the fact that they were bound, in connection with American's liabilities, jointly and severally.

American Biscuit's own submission, however, that:

The Court of Appeals erred in holding that petitioner's "accusation of breach" was, pursuant to the governing contracts, referable to arbitration, considering that the same is based on the failure of defendant Associated Biscuit, Inc. to carry out their terms and conditions, especially its failure to satisfy the indebtedness of petitioner mentioned therein, which, under said governing agreements, expressly grants petitioner the right to file suit for the cancellation or abrogation of the same. [20]

lacks merit.

A closer scrutiny of the contracts in question will show that, contrary to the contention of American Biscuit, there was, as between itself and Operators, a disagreement as to the meaning and effect of the governing contracts, a disagreement referable, indeed, to a Board of Arbitrators pursuant to the arbitration clause. And this was violated by American Biscuit when it made Operators a co-defendant in the complaint for the cancellation of the aforesaid agreements.

To be sure, even if the solidary nature of Operators liability is self-evident, American Biscuit cannot disregard such an arbitration clause stipulated in the contracts. Solidarity does not make a solidary obligor an indispensable party in a suit filed by the creditor. Article 1216 of the Civil Code says that the creditor "may proceed against anyone of the solidary debtors or some or all of them simultaneously." [21]

At the very least then, the inclusion of Operators in the case filed below is a dead issue. The dispute between the parties should have been the subject of arbitration as agreed upon.

IN VIEW OF THE FOREGOING, the decision appealed from is hereby affirmed in toto. No costs.

IT IS SO ORDERED.

Yap, Acting C.J., (Chairman), Melencio-Herrera, Paras, and Padilla, JJ., concur.

* Magno Gatmaitan, J., Lourdes San Diego and Ramon Fernandez, JJ, Concurring.

[1] Rollos, G.R. No. 34767, 18-25; G.R. No. 35024, 89-96; G.R. No. 35073, 27-34.

[2] Id., 73-74, 106-107; 44-45.

[3] Id., 75; 108; 46.

[4] Id., 76; 109; 47.

[5] Id., 91-92; 124-125; 65-66.

[6] Id., 92-93; 125-126; 66-67.

[7] Id., Brief, a-d.

[8] Brief, 1-2.

[9] Brief, 1-3.

[10] No. L-20274, October 30, 1969, 29 SCRA 760, 773 (1969).

[11] 95 Phil. 54 (1954).

[12] Rollo, id., 70; 103; 41.

[13] Rizal Cement Co., Inc. v. Villareal, No. L-30272, February 28, 1985, 135 SCRA 15 (1985); Garcia v. Orozco, No. L-35213, August 31, 1978, 85 SCRA 69 (1978).

[14] Brief, 47.

[15] Id., 44.

[16] Brief, 28.

[17] Id., 72; 105; 43; emphasis supplied.

[18] CIVIL CODE, art. 1207.

[19] Supra, art. 1211.

[20] Brief, 1-2.

[21] CIVIL CODE, supra, art. 1216.

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