

**GREEN VALLEY POULTRY & ALLIED PRODUCTS, INC.,
PETITIONER, VS. THE INTERMEDIATE APPELLATE COURT AND E.R.
SQUIBB & SONS PHILIPPINE CORPORATION, RESPONDENTS.**

G.R. No. L-49395. December 26, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is a petition to review a decision of the defunct Court of Appeals which affirmed the judgment of the trial court whereby:

"x x x, judgment is hereby rendered in favor of the plaintiff [E.R. Squibb & Sons Philippine Corporation], ordering the defendant [Green Valley Poultry & Allied Products, Inc.] to pay the sum of P48,374.74 plus P96.00 with interest at 6% per annum from the filing of this action; plus attorney's fees in the amount of P5,000.00 and to pay the costs."

On November 3, 1969, Squibb and Green Valley entered into a letter agreement the text of which reads as follows:

"E.R. Squibb & Sons Philippine Corporation is pleased to appoint Green Valley Poultry & Allied Products, Inc. as a non-exclusive distributor for Squibb Veterinary Products, as recommended by Dr. Leoncio D. Rebong, Jr. and Dr. J.G. Cruz, Animal Health Division Sales Supervisor.

"As a distributor, Green Valley Poultry & Allied Products, Inc. will be entitled to a discount as follows:

Feed Store Price (Catalogue)
Less 10%
Wholesale Price

Less 10%
Distributor Price

"There are exceptions to the above price structure. At present, these are:

1. Afsillin Improved - 40 lbs. bag

The distributor commission for this product size is 8% off P120.00.

2. Narrow-Spectrum Injectable Antibiotics

These products are subject to price fluctuations. Therefore, they are invoiced at net price per vial.

3. Deals and Special Offers are not subject to the above distributor price structure. A 5% distributor commission is allowed when the distributor furnishes copies for each sale of a complete deal or special offer to a feedstore, drugstore or other type of account.

"Deals and Special Offers purchased for resale at regular price invoiced at net deal or special offer price.

"Prices are subject to change without notice. Squibb will endeavor to advise you promptly of any price changes. However, prices in effect at the time orders are received by Squibb Order Department will apply in all instances.

"Green Valley Poultry & Allied Products, Inc. will distribute only for the Central Luzon and Northern Luzon including Cagayan Valley areas. We will not allow any transfer or stocks from Central Luzon and Northern Luzon including Cagayan Valley to other parts of Luzon, Visayas or Mindanao which are covered by our other appointed Distributors. In line with this, you will follow strictly our stipulations that the maximum discount you can give to your direct and turnover accounts will not go beyond 10%.

"It is understood that Green Valley Poultry and Allied Products, Inc. will accept turn-over orders from Squibb representatives for delivery to customers in your area. If for credit or other valid reasons a turn-over order is not served, the Squibb representative will be notified within 48 hours and hold why the order will not be served.

"It is understood that Green Valley Poultry & Allied Products, Inc. will put up a bond of P20,000.00 from a mutually acceptable bonding company.

"Payment for Purchases of Squibb Products will be due 60 days from date of invoice or the nearest business day thereto. No payment will be accepted in the form of post-dated checks. Payment by check must be on current dating.

"It is mutually agreed that this non-exclusive distribution agreement can be terminated by either Green Valley Poultry & Allied Products, Inc. or Squibb Philippines on 30 days notice.

"I trust that the above terms and conditions will be met with your approval and that the distributor arrangement will be one of mutual satisfaction.

"If you are agreeable, please sign the enclosed three (3) extra copies of this letter and return them to this Office at your earliest convenience.

"Thank you for your interest and support of the products of E.R. Squibb & Sons Philippines Corporation." (Rollo, pp. 12-13.)

For goods delivered to Green Valley but unpaid, Squibb filed suit to collect. The trial court as aforesaid gave judgment in favor of Squibb which was affirmed by the Court of Appeals.

In both the trial court and the Court of Appeals, the parties advanced their respective theories.

Green Valley claimed that the contract with Squibb was a mere agency to sell; that it never purchased goods from Squibb; that the goods received were on consignment only with the obligation to turn over the proceeds, less its commission, or to return the goods if not sold, and since it had sold the goods but had not been able to collect from the purchasers thereof, the action was premature.

Upon the other hand, Squibb claimed that the contract was one of sale so that Green Valley was obligated to pay for the goods received upon the expiration of the 60-day credit period.

Both courts below upheld the claim of Squibb that the agreement between the parties was a sales contract.

We do not have to categorize the contract. Whether viewed as an agency to sell or as a contract of sale, the

liability of Green Valley is indubitable. Adopting Green Valley's theory that the contract is an agency to sell, it is liable because it sold on credit without authority from its principal. The Civil Code has a provision exactly in point. It reads:

"Art. 1905. The commission agent cannot, with-out the express or implied consent of the principal, sell on credit. Should he do so, the principal may demand from him payment in cash, but the commission agent shall be entitled to any interest or benefit, which may result from such sale."

WHEREFORE, the petition is hereby dismissed; the judgment of the defunct Court of Appeals is affirmed with costs against the petitioner.

SO ORDERED.

Aquino, Concepcion, Jr., Escolin, and Cuevas, JJ., concur.

Makasiar, J., (Chairman), reserve his vote.

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