

VILLA REY TRANSIT, INC., PLAINTIFF-APPELLANT, VS. EUSEBIO E. FERRER, PANGASINAN TRANSPORTATION CO., INC., AND PUBLIC SERVICE COMMISSION, DEFENDANTS, EUSEBIO E. FERRER AND PANGAS...

G.R. No. L-23893. October 29, 1968

Ponente: ANGELES, J.

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ANGELES, J.:

This is a tri-party appeal from the decision of the Court of First Instance of Manila, Civil Case No. 41845, declaring null and void the sheriff's sale of two certificates of public convenience in favor of defendant Eusebio E. Ferrer and the subsequent sale thereof by the latter to defendant Pangasinan Transportation Co., Inc.; declaring the plaintiff Villa Rey Transit, Inc., to be the lawful owner of the said certificates of public convenience; and ordering the private defendants, jointly and severally, to pay to the plaintiff, the sum of P5,000.00 as and for attorney's fees. The case against the PSC was dismissed.

The rather ramified circumstances of the instant case can best be understood by a chronological narration of the essential facts, to wit:

Prior to 1959, Jose M. Villarama was an operator of a bus transportation, under the business name of Villa Rey Transit, pursuant to certificates of public convenience granted him by the Public Service Commission (PSC, for short) in Cases Nos. 44213 and 104651, which authorized him to operate a total of thirty-two (32) units on various routes or lines from Pangasinan to Manila, and vice-versa. On January 8, 1959, he sold the aforementioned two certificates of public convenience to the Pangasinan Transportation Company, Inc. (otherwise known as Pantranco), for P350,000.00 with the condition, among others, that the seller (Villarama) "shall not for a period of 10 years from the date of this sale, apply for any TPU service identical or competing with the buyer."

Barely three months thereafter, or on March 6, 1959, a corporation called Villa Rey Transit, Inc. (which shall be referred to hereafter as the Corpora-tion) was organized with a capital stock of P500,000.00 divided into 5,000 shares of the par value of P100.00 each; P200,000.00 was the subscribed stock; Nati-vidad R. Villarama (wife of Jose M. Villarama) was one of the incorporators, and she subscribed for P1,000.00; the balance of P199,000.00 was subscribed by the brother and sister-in-law of Jose M. Villarama; of the subscribed capital stock, P105,000.00 was paid to the treasurer of the corporation, who was Natividad R. Villarama.

In less than a month after its registration with the Securities and Exchange Commission (March 10, 1959), the Corporation, on April 7, 1959, bought five certificates of public convenience, forty-nine buses, tools and equipment from one Valentin Fernando, for the sum of P249,000.00, of which P100,000.00 was paid upon the signing of the contract; P50,000.00 was payable upon the final approval of the sale by the PSC; P49,500.00 one year after the final approval of the sale; and the balance of P50,000.00 "shall be paid by the BUYER to the different suppliers of the SELLER."

The very same day that the aforementioned contract of sale was executed, the parties thereto immediately applied with the PSC for its approval, with a prayer for the issuance of a provisional authority in favor of the vendee Corporation to operate the service therein involved.[1] On May 19, 1959, the PSC granted the provisional permit prayed for, upon the condition that "it may be modified or revoked by the Commission at any time, shall be subject to whatever action that may be taken on the basic application and shall be valid only during the pendency of said application." Before the PSC could take final action on said application for approval of sale, however, the Sheriff of Manila, on July 7, 1959, levied on two of the five certificates of public convenience involved therein, namely those issued under PSC cases Nos. 59494 and 63780, pursuant to a writ of execution issued by the Court of First Instance of Pangasinan in Civil Case No. 13798, in favor of Eusebio Ferrer, plaintiff, judgment creditor, against Valentin Fernando, defendant, judgment debtor. The Sheriff made and entered the levy in the records of the PSC. On July 16, 1959, a public sale was conducted by the Sheriff of the said two certificates of public convenience. Ferrer was the highest bidder, and a certificate of sale was issued in his name.

Thereafter, Ferrer sold the two certificates of public convenience to Pantranco, and jointly submitted for approval their corresponding contract of sale to the PSC.[2] Pantranco therein prayed that it be authorized provisionally to operate the service involved in the said two certificates.

The applications for approval of sale, filed before the PSC, by Fernando and the Corporation, Case No. 124057, and that of Ferrer and Pantranco, Case No. 126278, were scheduled for a joint hearing. In the meantime, to wit, on July 22, 1959, the PSC issued an order disposing that during the pendency of the cases and before a final resolution on the aforesaid applications, the Pantranco shall be the one to operate provisionally the service under the two certificates embraced in the contract between Ferrer and Pantranco. The Corporation took issue with this particular ruling of the PSC and elevated the matter to the Supreme Court,[3] which decreed, after deliberation, that until the issue on the ownership of the disputed certificates shall have been finally settled by the proper court, the Corporation should be the one to operate the lines provisionally.

On November 4, 1959, the Corporation filed in the Court of First Instance of Manila, a complaint for the annulment of the sheriff's sale of the aforesaid two certificates of public convenience (PSC Cases Nos. 59494 and 63780) in favor of the defendant Ferrer, and the sub-sequent sale thereof by the latter to Pantranco, against Ferrer, Pantranco and the PSC. The plaintiff Corporation prayed therein that all the orders of the PSC relative to the parties' dispute over the said certificates be annulled.

In separate answers, the defendants Ferrer and Pantranco averred that the plaintiff Corporation had no valid title to the certificates in question because the contract pursuant to which it acquired them from Fernando was subject to a suspensive condition - the approval of the PSC - which has not yet been fulfilled, and, therefore, the Sheriff's levy and the consequent sale at public auction of the certificates referred to, as well as the sale of the same by Ferrer to Pantranco, were valid and regular, and vested unto Pantranco, a superior right thereto.

Pantranco, on its part, filed a third-party complaint against Jose M. Villarama, alleging that Villarama and the Corporation, are one and the same; that Villarama and/or the Corporation was disqualified from operating the two certificates in question by virtue of the afore-mentioned agreement between said Villarama and Pantranco, which stipulated that Villarama "shall not for a period of 10 years from the date of this sale, apply for any TPU service identical or competing with the buyer."

Upon the joinder of the issues in both the complaint and third-party complaint, the case was tried, and thereafter decision was rendered in the terms as above stated.

As stated at the beginning, all the parties involved have appealed from the decision. They submitted a joint record on appeal.

Pantranco disputes the correctness of the decision insofar as it holds that Villa Rey Transit, Inc. (Corporation) is a distinct and separate entity from Jose M. Villarama; that the restriction clause in the contract of January 8, 1959 between Pantranco and Villarama is null and void, that the Sheriff's sale of July 16, 1959, is likewise null and void; and the failure to award damages in its favor and against Villarama.

Ferrer, for his part, challenges the decision insofar as it holds that the sheriff's sale is null and void; and the sale of the two certificates in question by Valentin Fernando to the Corporation, is valid. He also assails the award of P5,000.00 as attorney's fees in favor of the Corporation, and the failure to award moral damages to him as prayed for in his counterclaim.

The Corporation, on the other hand, prays for a review of that portion of the decision awarding only P5,000.00 as attorney's fees, and insisting that it is entitled to an award of P100,000.00 by way of exemplary damages.

After a careful study of the facts obtaining in the case, the vital issues to be resolved are: (1) Does the stipulation between Villarama and Pantranco, as contained in the deed of sale, that the former "SHALL NOT FOR A PERIOD OF 10 YEARS FROM THE DATE OF THIS SALE, APPLY FOR ANY TPU SERVICE IDENTICAL OR COMPETING WITH THE BUYER", apply to new lines only or does it include existing lines?; (2) Assuming that said stipulation covers all kinds of lines, is such stipulation valid and enforceable?; (3) In the affirmative, that said stipulation is valid, did it bind the Corporation?

For convenience, We propose to discuss the foregoing issues by starting with the last proposition.

The evidence has disclosed that Villarama, albeit was not an incorporator or stockholder of the Corporation, alleging that he did not become such, because he did not have sufficient funds to invest, his wife, however, was an incorporator with the least subscribed number of shares, and was elected treasurer of the Corporation. The finances of the Corporation which, under all concepts in the law, are supposed to be under the control and administration of the treasurer keeping them as trust fund for the Corporation, were, nonetheless, manipulated and disbursed as if they were the private funds of Villarama, in such a way and extent that Villarama appeared to be the actual owner-treasurer of the business without regard to the rights of the stockholders. The following testimony of Villarama,[4] together with the other evidence on record, attests to that effect:

"Q. - Doctor, I want to go back again to the incorporation of the Villa Rey Transit, Inc. You heard the testimony presented here by the bank re-garding the initial opening deposit of ONE HUNDRED FIVE THOUSAND PESOS, of which amount Eighty-Five Thousand Pesos was a check drawn by yourself personally. In the direct examination you told the Court that the reason you drew a check for Eighty-Five Thousand Pesos was because you and your wife, or your wife, had spent the money of the stockholders given to her for incorporation. Will you please tell the Honorable Court if you knew at the time your wife was spending the money to pay debts, you personally know she was spending the money of the incorporators?

"A. - You know my money and my wife's money are one. We never talk about those things.

"Q. - Doctor, your answer then is that since your money and your wife's money are one money and you did not know when your wife was paying debts with the incorporator's money?

"A. - Because sometimes she uses my money and sometimes the money, given to her she gives to me and I deposit the money.

"Q. - Actually, aside from your wife, you were also the custodian of some of the incorporators here, in the beginning?

"A. - Not necessarily, they give to my wife and when my wife hands to me I did not know it belonged to the incorporators.

"Q. - It supposes then your wife gives you some of the money received by her in her capacity as treasurer of the corporation?

"A. - Maybe.

"Q. - What did you do with the money, deposit in a regular account?

"A. - Deposit in my account.

"Q. - Of all the money given to your wife, she did not receive any check?

"A. - I do not remember.

"Q. - Is it usual for you, Doctor, to be given Fifty Thousand Pesos without even asking what is this?

x x x x x x x x x

JUDGE: Reform the question.

"Q. - The subscription of your brother-in-law, Mr. Reyes, is Fifty-Two Thousand Pesos, did your wife give you Fifty-Two Thousand Pesos?

"A. - I have testified before that sometimes my wife gives me money and I do not know exactly for what."

The evidence further show that the initial cash capitalization of the corporation of P105,000.00 was mostly financed by Villarama. Of the P105,000.00 de-posit in the First National City Bank of New York, representing the initial paid-up capital of the Corporation, P85,000.00 was covered by Villarama's personal check. The deposit slip for the said amount of P105,000.00 was admitted in evidence as Exh. 23, which shows on its face that P20,000.00 was paid in cash and P85,000.00 thereof was covered by Check No. F-50271 of the First National City Bank of New York. The testimonies of Alfonso Sancho[5] and Joaquin Amansec,[6] both employees of said bank, have proved that the drawer of the check was Jose Villarama himself.

Another witness, Celso Rivera, accountant of the Corporation, testified that while in the books of the corporation there appears an entry that the treasurer received P95,000.00 as second installment of the paid-in subscriptions, and, subsequently, also P100,000.00 as the first installment of the offer for second subscriptions worth P200,000.00 from the original subscribers, yet Villarama directed him (Rivera) to make vouchers liquidating the sums.[7] Thus, it was made to appear that the P95,000.00 was delivered to Villarama in payment for equipment purchased from him, and the P100,000.00 was loaned as advances to the stockholders. The said accountant, however, testified that he was not aware of any amount of money that had actually passed hands among the parties involved,[8] and actually the only money of the corporation was the P105,000.00 covered by the deposit slip Exh. 23, of which, as mentioned above, P85,000.00 was paid by Villarama's personal check.

Further, the evidence show that when the Corporation was in its initial months of operation, Villarama purchased and paid with his personal checks Ford trucks for the Corporation. Exhibits 20 and 21 disclose that the said purchases were paid by Philippine Bank of Commerce Checks Nos. 992618-B and 993621-B, respectively. These checks have been sufficiently established by Fausto Abad, Assistant Accountant of Manila Trading & Supply Co., from which the trucks were purchased[9] and Aristedes Solano, an employee of the Philippine Bank of Commerce,[10] as having been drawn by Villarama.

Exhibits 6 to 19 and Exh. 22, which are photostatic copies of ledger entries and vouchers showing that Villarama had co-mingled his personal funds and transactions with those made in the name of the Corporation, are very illuminating evidence. Villarama has assailed the admissibility of these exhibits, contending that no evidentiary value whatsoever should be given to them since "they were merely photostatic copies of the originals, the best

evidence be-ing the originals themselves." According to him, at the time Pantranco offered the said exhibits, it was the most likely possessor of the originals thereof be-cause they were stolen from the files of the Corpora-tion and only Pantranco was able to produce the alleged photostat copies thereof.

Section 5 of Rule 130 of the Rules of Court provides for the requisites for the admissibility of secondary evidence when the original is in the custody of the adverse party, thus: (1) opponent's possession of the original; (2) reasonable notice to opponent to produce the original; (3) satisfactory proof of its existence; and (4) failure or refusal of opponent to produce the original in court.[11] Villarama has practically admitted the second and fourth requisites.[12] As to the third, he admitted their previous existence in the files of the Corporation and also that he had seen some of them.[13] Regarding the first element, Villarama's theory is that since even at the time of the issuance of the subpoena duces tecum, the originals were already missing, therefore, the Corporation was no longer in possession of the same. However, it is not necessary for a party seeking to introduce secon-dary evidence to show that the original is in the act-ual possession of his adversary. It is enough that the circumstances are such as to indicate that the writing is in his possession or under his control.

Neither is it required that the party entitled to the custody of the instrument should, on being notified to produce it, admit having it in his possession.[14] Hence, secondary evidence is admissible where he de-nies having it in his possession. The party calling for such evidence may introduce a copy thereof as in the case of loss. For, among the exceptions to the best evidence rule is "when the original has been lost, destroyed, or cannot be produced in court." [15] The originals of the vouchers in question must be deemed to have been lost, as even the Corporation admits such loss. Viewed upon this light, there can be no doubt as to the admissibility in evidence of Exhi-bits 6 to 19 and 22.

Taking account of the foregoing evidence, together with Celso Rivera's testimony,[16] it would Appear that: Villarama supplied the organization expenses and the assets of the Corporation, such as trucks and equipments;[17] there was no actual payment by the original subscribers of the amounts of P95,000.00 and P100,000.00 as appearing in the books;[18] Villarama made use of the money of the Corporation and deposited them to his private accounts;[19] and the Corporation paid his personal accounts.[20]

Villarama himself admitted that he mingled the corporate funds with his own money.[21] He also admitted that gasoline purchases of the Corporation were made in his name[22] because "he had existing account with Stanvac which was properly secured and he wanted the Corporation to benefit from the rebates that he received." [23]

The foregoing circumstances are strong persua-sive evidence showing that Villarama has been too much involved in the affairs of the Corporation to al-together negative the claim that he was only a part time general manager. They show beyond doubt that the Corporation is his alter ego.

It is significant that not a single one of the acts enumerated above as proof of Villarama's oneness with the Corporation has been denied by him. On the contrary, he has admitted them with offered ex-cuses.

Villarama has admitted, for instance, having paid P85,000.00 of the initial capital of the Corpo-ration with the lame excuse that "his wife had requested him to reimburse the amount entrusted to her by the incorporators and which she had used to pay the obligations of Dr. Villarama (her husband) incur-red while he was still the owner of Villa Rey Transit, a single proprietorship." But with his admission that he had received P350,000.00 from Pantranco for the sale of the two certificates and one unit,[24] it becomes difficult to accept Villarama's explanation that he and his wife, after consultation,[25] spent the money of their relatives (the stockholders) when they were supposed to have their own money. Even if Pantranco paid the P350,000.00 in check to him, as claimed, it could have been easy for Villarama to have deposited said check in his account and issued his own check to pay his obligations. And there is no evidence adduced that the said amount of P350,000.00 was all spent

or was insufficient to settle his prior obligations in his business, and in the light of the stipulation in the deed of sale between Villarama and Pantranco that P50,000.00 of the selling price was earmarked for the payments of accounts due to his creditors, the excuse appears unbelievable.

On his having paid for purchases by the Corporation of trucks from the Manila Trading & Supply Co. with his personal checks, his reason was that he was only sharing with the Corporation his credit with some companies. And his main reason for mingling his funds with that of the Corporation and for the latter's paying his private bills is that it would be more convenient that he kept the money to be used in paying the registration fees on time, and since he had loaned money to the Corporation, this would be set-off by the latter's paying his bills. Villarama admitted, however, that the corporate funds in his possession were not only for registration fees but for other important obligations which were not specified.[26]

Indeed, while Villarama was not the Treasurer of the Corporation but was, allegedly, only a part-time Manager,[27] he admitted not only having held the corporate money but that he advanced and lent funds for the Corporation, and yet there was no Board Resolution allowing it.[28]

Villarama's explanation on the matter of his involvement with the corporate affairs of the Corporation only renders more credible Pantranco's claim that his control over the corporation, especially in the management and disposition of its funds, was so extensive and intimate that it is impossible to segregate and identify which money belonged to whom. The interference of Villarama in the complex affairs of the corporation, and particularly its finances, are much too inconsistent with the ends and purposes of the Corporation law, which, precisely, seeks to separate personal responsibilities from corporate undertakings. It is the very essence of incorporation that the acts and conduct of the corporation be carried out in its own corporate name because it has its own personality.

The doctrine that a corporation is a legal entity distinct and separate from the members and stockholders who compose it is recognized and respected in all cases which are within reason and the law.[29] When the fiction is urged as a means of perpetrating a fraud or an illegal act or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, the achievement or perfection of a monopoly or generally the perpetration of knavery or crime,[30] the veil with which the law covers and isolates the corporation from the members or stockholders who compose it will be lifted to allow for its consideration merely as an aggregation of individuals.

Upon the foregoing considerations, We are of the opinion, and so hold, that the preponderance of evidence have shown that the Villa Rey Transit, Inc. is an alter ego of Jose M. Villarama, and that the restrictive clause in the contract entered into by the latter and Pantranco is also enforceable and binding against the said Corporation. For the rule is that a seller or promisor may not make use of a corporate entity as a means of evading the obligation of his covenant.[31] Where the Corporation is substantially the alter ego of the covenantor to the restrictive agreement, it can be enjoined from competing with the covenantee.[32]

The Corporation contends that even on the supposition that Villa Rey Transit, Inc. and Villarama are one and the same, the restrictive clause in the contract between Villarama and Pantranco does not include the purchase of existing lines but it only applies to application for new lines. The clause in dispute reads thus:

"(4) The SELLER shall not, for a period of ten (10) years from the date of this sale apply for any TPU service identical or competing with the BUYER." (Underscoring supplied)

As We read the disputed clause, it is evident from the context thereof that the intention of the parties was to eliminate the seller as a competitor of the buyer for ten years along the lines of operation covered by the certificates of public convenience subject of their transaction. The word "apply" as broadly used has for frame of reference, a service by the seller on lines or routes that would compete with the buyer along the routes acquired by

the latter. In this jurisdiction, prior authorization is needed before anyone can operate a TPU service,[33] whether the service consists in a new line or an old one acquired from a previous operator. The clear intention of the parties was to prevent the seller from conducting any competitive line for 10 years since, anyway, he has bound himself not to apply for authorization to operate along such lines for the duration of such period.[34]

If the prohibition is to be applied only to the acquisition of new certificates of public convenience thru an application with the Public Service Commission, this would, in effect, allow the seller just the same to compete with the buyer as long as his authority to operate is only acquired thru transfer or sale from a previous operator, thus defeating the intention of the parties. For what would prevent the seller, under the circumstances, from having a representative or dummy apply in the latter's name and then later on transferring the same by sale to the seller? Since stipulations in a contract is the law between the contracting parties,

"Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith." (Art. 19, New Civil Code.)

We are not impressed of Villarama's contention that the re-wording of the two previous drafts of the contract of sale between Villarama and Pantranco is significant in that as it now appears, the parties intended to effect the least restriction. We are persuaded, after an examination of the supposed drafts, that the scope of the final stipulation, while not as long and prolix as those in the drafts, is just as broad and comprehensive. At most, it can be said that the re-wording was done merely for brevity and simplicity.

The evident intention behind the restriction was to eliminate the seller as a competitor, and this must be, considering such factors as the good will[35] that the seller had already gained from the riding public and his adeptness and proficiency in the trade. On this matter, Corbin, an authority on Contracts, has this to say:[36]

"When one buys the business of another as a going concern, he usually wishes to keep it going; he wishes to get the location, the building, the stock in trade, and the customers. He wishes to step into the seller's shoes and to enjoy the same business relations with other men. He is willing to pay much more if he can get the 'good will' of the business, meaning by this the good will of the customers, that they may continue to tread the old footpath to his door and maintain with him the business relations enjoyed by the seller.

"x x x In order to be well assured of this, he obtains and pays for the seller's promise not to reopen business in competition with the business sold."

As to whether or not such a stipulation in restraint of trade is valid, our jurisprudence on the matter[37] says:

"The law concerning contracts which tend to restrain business or trade has gone through a long series of changes from time to time with the changing condition of trade and commerce. With trifling exceptions, said changes have been a continuous development of a general rule. The early cases show plainly a disposition to avoid and annul all contract which prohibited or restrained any one from using a lawful trade 'at any time or at any place', as being against the benefit of the state. Later; however, the rule became well established that if the restraint was limited to 'a certain time' and within 'a certain place', such contracts were valid and not 'against the benefit of the state.' Later cases, and we think the rule is now well established, have held that a contract in restraint of trade is valid providing there is a limitation upon either time or place. A contract, however, which restrains a man from entering into business or trade without either a limitation as to time or place, will be held invalid.

"The public welfare of course must always be considered and if it be not involved and the restraint upon one party is not greater than protection to the other requires, contracts like the one we are discussing will be sustained. The general tendency, we believe, of modern authority, is to make the test whether the restraint is reasonably necessary for the protection of the contracting parties. If the contract is reasonably necessary to protect the interest of the parties, it will be upheld." (Underscoring supplied.)

Analyzing the characteristics of the questioned stipulation, We find that although it is in the nature of an agreement suppressing competition, it is, however, merely ancillary or incidental to the main agreement which is that of sale. The suppression or restraint is only partial or limited: first, in scope, it refers only to application for TPU by the seller in competition with the lines sold to the buyer; second, in duration, it is only for ten (10) years; and third, with respect to situs or territory, the restraint is only along the lines covered by the certificates sold. In view of these limitations, coupled with the consideration of P350,000.00 for just two certificates of public convenience, and considering, furthermore, that the disputed stipulation is only incidental to a main agreement, the same is reasonable and it is not harmful nor obnoxious to public service.[38] It does not appear that the ultimate result of the clause or stipulation would be to leave solely to Pantranco the right to operate along the lines in question, thereby establishing a monopoly or predominance approximating thereto. We believe the main purpose of the restraint was to protect for a limited time the business of the buyer.

Indeed, the evils of monopoly, are farfetched here. There can be no danger of price controls or deterioration of the service because of the close supervision of the Public Service Commission.[39] This Court had stated long ago,[40] that "when one devotes his property to a use in which the public has an interest, he virtually grants to the public an interest in that use and submits it to such public use under reasonable rules and regulations to be fixed by the Public Utility Commission."

Regarding that aspect of the clause that it is merely ancillary or incidental to a lawful agreement, the underlying reason sustaining its validity is well explained in 36 Am. Jur. 537-539, to wit:

"x x x Numerous authorities hold that a covenant which is incidental to the sale and transfer of a trade or business, and which purports to bind the seller not to engage in the same business in competition with the purchaser, is lawful and enforceable. While such covenants are designed to prevent competition on the part of the seller, it is ordinarily neither their purpose nor effect to stifle competition generally in the locality, nor to prevent it at all in a way or to an extent injurious to the public. The business in the hands of the purchaser is carried on just as it was in the hands of the seller; the former merely takes the place of the latter; the commodities of the trade are as open to the public as they were before; the same competition exists as existed before; there is the same employment furnished to others after as before; the profits of the business go as they did before to swell the sum of public wealth; the public has the same opportunities of purchasing, if it is a mercantile business; and production is not lessened if it is a manufacturing plant."

The reliance by the lower court on the case of *Red Line Transportation Co. v. Bachrach*,[41] and finding that the stipulation is illegal and void seems misplaced. In the said *Red Line* case, the agreement therein sought to be enforced was virtually a division of territory between two operators, each company imposing upon itself an obligation not to operate in any territory covered by the routes of the other. Restraints of this type, among common carriers, have always been covered by the general rule invalidating agreements in restraint of trade.[42]

Neither are the other cases relied upon by the plaintiff-appellee applicable to the instant case. In *Pampang Bus Co. Inc. v. Enriquez*,[43] the undertaking of the applicant therein not to apply for the lifting of restrictions imposed on his certificates of public convenience was not an ancillary or incidental agreement. The restraint was the principal objective. On the other hand, in *Red Line Transportation Co. Inc. v. Gonzaga*,[44] the restraint there in question not to ask for extension of the line, or trips, or increase of equipment - was not an agreement between the parties but a condition imposed in the certificate of public convenience itself.

Upon the foregoing considerations, Our conclusion is that the stipulation prohibiting Villarama for a period of 10 years to "apply" for TPU service along the lines covered by the certificates of public convenience sold by him to Pantranco is valid and reasonable. Having arrived at this conclusion, and considering that the preponderance of the evidence have shown that Villa Rey Transit, Inc. is itself the alter ego of Villarama, We hold, as prayed for in

Pantranco's third party complaint, that the said Corporation should, until the expiration of the 1-year period abovementioned, be enjoined from operating the lines subject of the pro-hibition.

To avoid any misunderstanding, it is here to be emphasized that the 10year prohibition upon Villarama is not against his application for, or purchase of, certificates of public convenience, but merely the operation of TPU along the lines covered by the certificates sold by him to Pantranco. Consequently, the sale between Fernando and the Corporation is valid, such that the rightful ownership of the disputed certificates still belongs to the plaintiff being the prior purchaser in good faith and for value thereof. In view of the ancient rule of caveat emptor prevailing in this jurisdiction, what was acquired by Ferrer in the sheriff's sale was only the right which Fernando, judgment debtor, had in the certificates of public convenience on the day of the sale. [45]

Accordingly, by the "Notice of Levy Upon Personalty" the Commissioner of Public Service was notified that "by virtue of an Order of Execution issued by the Court of First Instance of Pangasinan, the rights, interests, or participation which the defendant, VALENTIN A. FERNANDO - in the above entitled case may have in the following realty/personalty is attached or levied upon, to wit: The rights, interests and participation on the Certificates of Public Convenience issued to Valentin A. Fernando, in Cases Nos. 59494, etc. x x x Lines - Manila to Lingayen, Dagupan, etc. vice versa." Such notice of levy only shows that Ferrer, the vendee at auction of said certificates, merely stepped into the shoes of the judgment debtor. Of the same principle is the provision of Article 1544 of the Civil Code, that "If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property."

There is no merit in Pantrenco and Ferrer's theory that the sale of the certificates of public convenience in question, between the Corporation and Fernando, was not consummated, it being only a conditional sale subject to the suspensive condition of its approval by the Public Service Commission. While section 20(g) of the Public Service Act provides that "subject to established limitation and exceptions and saving provisions to the contrary, it shall be unlawful for any public service or for the owner, lessee or operator thereof, without the approval and authorization of the Commission previously had x x x to sell, alienate, mortgage, encumber or lease its property, franchise, certificates, privileges, or rights or any part thereof, x x x," the same section also provides:

"x x x Provided, however, That nothing herein contained shall be construed to prevent the transaction from being negotiated or completed before its approval or to prevent the sale, alienation, or lease by any public service of any of its property in the ordinary course of its business."

It is clear, therefore, that the requisite approval of the PSC is not a condition precedent for the validity and consummation of the sale.

Anent the question of damages allegedly suffered by the parties, each of the appellants has its or his own version to allege.

Villa Rey Transit, Inc. claims that by virtue of the "tortious acts" of defendants (Pantranco and Ferrer) in acquiring the certificates of public convenience in question, despite constructive and actual knowledge on their part of a prior sale executed by Fernando in favor of the said corporation, which necessitated the latter to file the action to annul the sheriff's sale to Ferrer and the subsequent transfer to Pantranco, it is entitled to collect actual and compensatory damages, and attorney's fees in the amount of P25,000.00. The evidence on record, however, does not clearly show that said defendants acted in bad faith in their acquisition of the certificates in question. They believed that because the bill of sale has yet to be approved by the Public Service Commission, the transaction was not a consummated sale, and, therefore, the title to or ownership of the certificates was still with the seller. The award by the lower court of attorney's fees of P5,000.00 in favor of Villa Rey Transit, Inc. is,

therefore, without basis and should be set aside.

Eusebio Ferrer's charge that by reason of the filing of the action to annul the sheriff's sale, he had suffered and should be awarded moral, exemplary damages and attorney's fees, cannot be entertained, in view of the conclusion herein reached that the sale by Fernando to the Corporation was valid.

Pantranco, on the other hand, justifies its claim for damages with the allegation that when it purchased Villarama's business for P350,000.00, it intended to build up the traffic along the lines covered by the certificates but it was not afforded an opportunity to do so since barely three months had elapsed when the contract was violated by Villarama operating along the same lines in the name of Villa Rey Transit, Inc. It is further claimed by Pantranco that the underhanded manner in which Villarama violated the contract is pertinent in establishing punitive or moral damages. Its contention as to the proper measure of damages is that it should be the purchase price of P350,000.00 that it paid to Villarama. While we are fully in accord with Pantranco's claim of entitlement to damages it suffered as a result of Villarama's breach of his contract with it, the record does not sufficiently supply the necessary evidentiary materials upon which to base the award and there is need for further proceedings in the lower court to ascertain the proper amount.

PREMISES CONSIDERED, the judgment appealed from is hereby modified as follows:

1. The sale of the two certificates of public convenience in question by Valentin Fernando to Villa Rey Transit, Inc. is declared preferred over that made by the Sheriff at public auction of the aforesaid certificate of public convenience in favor of Eusebio Ferrer;
2. Reversed, insofar as it dismisses the third-party complaint filed by Pangasinan Transportation Co. against Jose M. Villarama, holding that Villa Rey Transit, Inc. is an entity distinct and separate from the personality of Jose M. Villarama, and insofar as it awards the sum of P5,000.00 as attorney's fees in favor of Villa Rey Transit, Inc.;
3. The case is remanded to the trial court for the reception of evidence in consonance with the above findings as regards the amount of damages suffered by Pantranco; and
4. On equitable considerations, without costs. So ordered.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Ruiz Castro, and Fernando, JJ., concur.
Sanchez and Capistrano, JJ., took no part.
Zaldivar, J., on leave.

[1] Application for approval of sale docketed as PSC Case No. 124057.

[2] PSC Case No. 126278.

[3] G.R. Nos. L-17684-85, promulgated May 30, 1962.

[4] TSN, pp. 1649-1651, Session of April 8, 1963.

[5] TSN, pp. 1210, 1217-1218, Session of Oct. 8, 1962.

[6] TSN, p. 1262, Session of Nov. 8, 1962.

[7] TSN, pp. 947-948, Session of Sept. 3, 1962; TSN, pp. 1022, 1025, 1027-1029, Session of Sept. 7, 1962.

[8] TSN, pp. 948-949.

[9] TSN, pp. 899, 901, Session of Aug. 27, 1962.

- [10] TSN, pp. 1227-1228, Session of Oct. 8, 1962.
- [11] Francisco, Evidence, 1964 ed. p. 113.
- [12] Plaintiff-appellee's Brief, pp. 45-46.
- [13] TSN, pp. 1568-1569, Session of April 8, 1963.
- [14] See the Revised Rules of Court - Evidence by Francisco, 1964 ed., pp. 113-114.
- [15] Sec. 2(a), Rule 130, Rules of Court.
- [16] It was Celso Rivera who prepared these documents as admitted by Villarama, TSN, pp. 1580-1581, Session of April 8, 1963.
- [17] Exh. 6.
- [18] Exhs. 8 to 8-C.
- [19] Exhs. 7 to 7-C.
- [20] Exhs. 10 to 19, 22; TSN, pp. 1709-1710, Session of April 16, 1963.
- [21] TSN, p. 1625, Session of April 8, 1963.
- [22] TSN, p. 1646, Session of April 8, 1963.
- [23] Brief for Plaintiff-appellee, p. 49.
- [24] TSN, pp. 1593, 1658, Session of April 8, 1963.
- [25] TSN, pp. 1660-1661, ditto.
- [26] TSN, pp. 1699-1718, Session of April 16, 1963.
- [27] TSN, p. 1714, Session of April 16, 1963.
- [28] TSN, pp. 1627-1628, Session of April 8, 1963.
- [29] Borja v. Vasquez, 74 Phil. 56.
- [30] Koppel Phil. v. Yatco, 77 Phil. 496; Lidell & Co. v. Collector, G.R. No. L-9687, June 30, 1961; Commissioner v. Norton & Narrison, G.R. No. L-17618, Aug. 31, 1964; Guevarra, Phil. Corp. Law, 1961 ed., p. 7.
- [31] 36 Am. Jur. 548; 18 Am. Jur. 2nd 563-564.

[32] 94 A.L.R. 346, 348.

- [33] Secs. 15 and 18, Com. Act 146.
- [34] The 10-year period will expire on January, 1969. Hence, it is practically over.
- [35] Recent cases have enlarged the concept of good will over the behavioristic resort of old customers to the old place of business. It is now recognized that "It may include in addition to those factors all that goes with a business in excess of its mere capital and physical value, such as reputation for promptness, fidelity, integrity, politeness, business sagacity and commercial skill in the conduct of its affairs, solicitude for the welfare of customers and other tangible elements which contribute to successful commercial venture." (Footnotes to p. 4592,

Williston on Contracts, Vol. 5, citing cases.)

[36] Corbin on Contracts, Vol. 6, Sec. 1385, p. 483.

[37] Del Castillo v. Richmond, 45 Phil. 683, citing Anchor Electric Co. v. Hawkes, 171 Mass. 101; Alger v. Tacher, 19 Pickering (Mass.) 51; Taylor v. Blanchard, 13 Allen (Mass.) 370; Lurkin Rule Co. v. Fringeli, 57 Ohio State 596; Fowle v. Park, 131 U.S. 88; 97; Diamond Match Co. v. Reeber, 106 N.Y. 473; National Benefit Co. v. Union Hospital Co., 45 Minn. 272; Swigert & Howard v. Tilden, 121 Iowa, 650. See also Ollendorf v. Abrahamson, 38 Phil. 585.

[38] Clearly, the greater part of said consideration was to compensate Villarama for not competing with Pantranco for at least 10 years, within which period the latter would put up 31 other units (certificates contained authorization for 32 units), train drivers thereof and incur such other expenses, so as to put the service along the lines acquired in good, operating and competing condition.

[39] See Secs. 16-C, 19 and 20-A, Com. Act 146.

[40] National Coal Co. v. Public Utility Commission, 47 Phil. 356, 360.

[41] 67 Phil. 577.

[42] See Negros Ice & Cold Storage Co. Inc. v. PSC, 90 Phil. 138. See also 58 C.J.S. 1051.

[43] 66 Phil. 645.

[44] G.R. No. L-10834, April 28, 1960.

[45] See secs. 25 & 26, Rule 39, Rules of Court.

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