

NATIONAL MARKETING CORPORATION (NAMARCO), JOVENAL D. ALMENDRAS AND SERAPIO J. DATOC, PETITIONERS VS. HON. GAUDENCIO CLORIBEL, IN HIS CAPACITY AS DISTRICT JUDGE OF THE COURT OF F...

G.R. No. L-27260. April 29, 1968

Ponente: DIZON, J.

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DIZON, J.:

Most of the proceedings and facts material to the present action are the same as those involved in another between virtually the same parties (G.R. No. L-26585) decided by Us on March 13, 1968. As in the latter, We now have before Us a petition for certiorari and prohibition, with a prayer for the issuance of a writ of preliminary injunction, filed by the National Marketing Corporation — hereinafter referred to as . NAMARCO — Jovenal Almendras, and Serapio J. Datoc against the Honorable Gaudencio Cloribel, Judge of the Court of First Instance of Manila, and German E. Villanueva, doing business under the name and style of VILTRA Company — hereinafter referred to as VILTRA — to annul certain orders issued by the respondent judge in Civil Case No. 64696 of his Court and for other reliefs. On March 7, 1967, We gave due course to the petition and ordered the issuance of the writ of preliminary injunction prayed for therein.

For purposes of this decision We reproduce the following portions of the one We rendered in G.R. No. L-26585 mentioned heretofore:

“It appears that respondent German E. Villanueva, a Manila businessman, had been trading under the name and style of VILTRA Company. For purposes of this decision We shall hereafter refer to him simply as VILTRA.

“On March 11, 1966 VILTRA filed in the Court of First Instance of Manila an action for mandamus against NAMARCO and Pacific Banking Corporation, with a prayer for the issuance of a writ of preliminary injunction and a judgment for damages. On the same date the verified petition was superseded by an amended one, the only amendment introduced being the omission of the Pacific Banking Corporation as a party respondent.

“Main allegations of the verified petition above referred to were: that on November 24, 1965 VILTRA and NAMARCO had entered into a written contract, the former as buyer and the latter as seller, whereby VILTRA agreed to open an irrevocable domestic letter of credit in favor of NAMARCO who, in turn, would open an irrevocable foreign letter of credit in favor of certain parties in Japan who would supply 10,000 metric tons of wire rods valued at \$1,320,000.00; that subsequently NAMARCO refused to comply with its obligation to open an irrevocable foreign letter of credit in favor of the suppliers, as a result of which the wire rods agreed upon could not be shipped and imported to the Philippines, to the damage and prejudice of VILTRA in the total amount of P330,000; that on March 11, 1966 the respondent judge ordered the issuance of the writ of preliminary injunction prayed for in the verified petition upon the filing by VILTRA and approval by the Court of a P10,000 bond, said writ having been subsequently issued commanding NAMARCO to honor, comply

and/or abide with the contract of sale mentioned in the petition as executed on November 24, 1965 and to request or direct the Pacific Banking Corporation to immediately send a cable to its correspondent bank in Japan and open immediately upon receipt of the writ an irrevocable letter of credit in favor of Tokyo Boeki Ltd. for the account of NAMARCO in connection with 10,000 metric tons of wire rods at \$132 per metric ton; that in due time NAMARCO filed its answer to the amended petition praying for its dismissal, alleging substantially, inter alia, that VILTRA was not a qualified applicant for trade assistance under Section 7, Administrative Order No. 17 of NAMARCO dated August 31, 1965, and that VILTRA itself had failed to open an irrevocable domestic letter of credit in pursuance of the alleged agreement.

“The motion filed by NAMARCO for the reconsideration of the order granting, and the issuance of, the writ of preliminary mandatory injunction was denied on March 24, 1966.

“Thereafter, or more specifically, on March 16, 1966, VILTRA filed an urgent motion to cite herein petitioners Jovenal D. Almendras and Serapio Datoc, Acting General Manager and Assistant General Manager, respectively, of NAMARCO, for contempt of court upon the ground that they had refused and failed to comply with the order of the Court of March 11, 1966. Granting the motion the Court ordered Almendras and Datoc to appear before it on March 16, 1966 to show cause why they should not be found guilty of contempt. After said parties had given their explanation, the respondent judge issued on March 29, 1966 an order finding them guilty of contempt of court and ordering their arrest.

It is not disputed that Almendras and Datoc filed on March 30, 1966 a notice of appeal from the order just mentioned, together with the corresponding appeal bond. However, VILTRA objected to the appeal being given due course on the ground that the notice of appeal filed did not mention the court to which the aggrieved parties were appealing. Notwithstanding the reply filed by Almendras and Datoc to said opposition, the respondent judge, in his order of July 6, 1966 ‘dismissed’ (refused to give due course to) the appeal. Almendras and Datoc filed an urgent motion for the reconsideration of this order of July 6 and prayed that their appeal be given due course, but the respondent judge, in an order dated August 24, 1966, denied the same for lack of merit and further directed the Sheriff of Manila to enforce the court's order of July 6, 1966 in relation to those issued on March 11, 24 and 29 of the same year. Furthermore, the respondent judge issued another order dated September 16, 1966 directing the Sheriff of Manila or his deputy to take Almendras and Datoc into their custody and not to release them until they had complied with the order of March 11, 1966.”

Aside from the facts set forth above, the following are material and relevant to the present case.

It appears that on November 23, 1966 VILTRA filed in the main case — Civil Case No. 64696 — a motion for the admission of an amended complaint. Notwithstanding NAMARCO'S opposition the respondent judge admitted the amended complaint. It is to be observed in this connection that while both the petition with which civil action No. 64696 was commenced and the amended petition by which it was superseded were for MANDAMUS WITH PRELIMINARY INJUNCTION AND DAMAGES, VILTRA'S last amended complaint was for SPECIFIC PERFORMANCE AND DAMAGES. In other words, there was a complete change in the nature of the action; the original was a special civil action, with a prayer for the immediate issuance of a writ of preliinary mandatory injunction, while the second was an ordinary civil action for specific performance of an alleged contract.

It is not disputed that on December 9, 1966, within the reglementary period for the filing of an answer to the last amended complaint, NAMARCO filed its answer thereto. However, two days before, VILTRA had already filed a motion for summary judgment claiming that, except as to the amount of damages, there was no genuine issue of fact between the parties, and that NAMARCO had only raised two issues in its answer (obviously referring to NAMARCO'S answer to the first amended complaint which was the only one in the record at that time) namely, that the contract sued upon was not duly perfected and that VILTRA had not complied with its own obligations thereunder. Upon the filing of NAMARCO'S answer to the second or last amended complaint on December 9, 1966, VILTRA filed on December 14 of the same year a motion to strike out said pleading. This motion was

granted by the respondent judge in his order of December 17, 1966, which likewise granted VILTRA's motion for summary judgment. Pursuant to this order, His Honor, under date of December 19, 1966, rendered a so-called PARTIAL DECISION, the dispositive part of which reads as follows:

“WHEREFORE, judgment is hereby rendered in favor of the plaintiff against the defendant, ordering the said defendant to comply with its obligation under the contract in question, more specifically to cause the opening immediately of an irrevocable letter of credit in favor of Tokyo Boeki, Ltd. in accordance with the terms and conditions of paragraph 2 of the contract, upon compliance by the plaintiff of the terms of said paragraph 2 relative to the opening of a domestic letters of credit.”

NAMARCO's motion for reconsideration of the order granting the motion for summary judgment and of the order striking out its answer to the last amended complaint was denied by the respondent judge on January 10, 1967.

Subsequently, or more specifically on January 25, 1967 VILTRA filed a motion for execution pending appeal, claiming that whatever appeal NAMARCO might take from the aforesaid partial decision was frivolous, and that said decision might become illusory if its immediate execution was not ordered. Notwithstanding NAMARCO's opposition the respondent judge issued an order granting the motion for execution. Again, NAMARCO's motion for reconsideration of this last order was denied by the respondent judge.

On February 15, 1967, NAMARCO filed a motion to quash the writ of execution issued under date of February 14, 1967. Resolving the same, it is true that the respondent judge recalled said writ of execution because he had discovered that the same was issued and served upon NAMARCO, earlier than the service of a copy of the order denying its motion for reconsideration of the order granting the motion for execution but in the same order His Honor provided as follows: “Let another writ of execution be issued”.

Upon the other hand, it is not disputed that within the reglementary period for appeal NAMARCO filed its notice of appeal, appeal bond and record on appeal in connection with the partial decision mentioned heretofore. VILTRA objected to the giving of due course to said appeal but, as far as the record of this case shows, no final action was taken in connection with the approval or disapproval of the record on appeal because in his order of February 18, 1967 the respondent judge not only ordered the issuance of a second writ of execution but likewise postponed the consideration of the approval of the record on appeal on February 25, 1967, and, as already stated, the record of this case fails to disclose further proceedings in connection therewith.

The present action may be resolved solely upon the question of whether or not it was proper and legal for the respondent judge to admit the second amended complaint (petition) whereby the original special civil action for mandamus was completely changed into an ordinary civil action for specific performance of an alleged contract, with damages in both cases, and whether or not, considering not only the answer filed by NAMARCO to the original and first amended complaint but also, its answer to the second or last amended complaint, it was regular and proper for the respondent judge to render the partial decision mentioned above.

We feel that both questions must be resolved adversely to VILTRA and the respondent judge.

With respect to the first question, it was patent that the action for mandamus had no leg to stand on because the writ was sought to enforce alleged contractual obligations under a disputed contract — disputed not only on the ground that it had failed of perfection but on the further ground that it was illegal and against public interest and public policy. We so held in the previous action between the same parties (G.R. No. L-26585) decided by Us on March 13 of the present year.

If the action for mandamus was clearly untenable, the issuance by the respondent judge of the preliminary writ of

mandatory injunction mentioned heretofore was worse. We likewise held it to be so in our decision just referred to.

It is obvious, therefore, that the amended pleading, which changed the very nature of the action, was clearly intended to correct VILTRA's error in instituting a special civil action for mandamus to enforce contractual obligations, and that the partial decision summarily rendered by the respondent judge under the irregular circumstances described above was intended to replace the unwarranted preliminary writ of mandatory injunction issued by him before the filing and admission of the last amended complaint.

With regard to the rendition of the summary partial decision, it is clear that the same was irregular because in both answers filed by NAMARCO - one to the first amended complaint for mandamus, and the other to the last or second amended complaint entitled "For Specific Performance and Damages" - the illegality and unenforceability of the alleged contract between VILTRA and NAMARCO — on both legal and factual grounds — was duly raised. Consequently, it was, to say the least, improvident to issue a preliminary mandatory injunction for its performance, or render a partial judgment precisely requiring compliance with one of its essential features or stipulations. Having arrived at this conclusion, it follows that the several writs issued by the respondent judge for its execution are likewise irregular and void.

WHEREFORE, the writs of certiorari and prohibition prayed for are granted and the writ of preliminary injunction issued heretofore is hereby made permanent.

With costs.

Reyes, J.B.L., (Acting C.J.), Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur.

Petition granted.

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