

BATONG BUHAY GOLD MINES, INC., PETITIONER, VS. THE COURT OF APPEALS AND INCO MINING CORPORATION, RESPONDENTS.

G.R. No. L-45048. January 07, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition to review the decision dated August 27, 1976 of the Court of Appeals (CA) in CA-G.R. No. 51313-R which modified the decision of the then Court of First Instance (CFI) of Manila, Branch II in Civil Case No. 79183. Also sought for review are the resolutions of the aforementioned court dated October 21, 1976 and November 12, 1976 which denied petitioner's motion for reconsideration of the subject decision and petition and/or motion for new trial, respectively.

The dispositive portion of the CFI judgment reads:

"WHEREFORE, the Court renders judgment enjoining the defendants to effect the transfer of the shares covered by Stock Certificate No. 16807 to and in the name of plaintiff INCO Mining Corporation, and the writ of preliminary mandatory injunction issued on March 16, 1970 is hereby declared permanent.

SO ORDERED."

Upon the other hand, the decretal portion of the CA decision states:

"WHEREFORE, the judgment appealed from is hereby modified by adding the following to the dispositive portion thereof:

"Ordering defendant Batong Buhay Gold Mines, Inc. to pay to the plaintiff the sum of P5,625.55, with interest at the legal rate from March 5, 1970 until full payment; and dismissing the complaint with respect to defendant Del Rosario and Company. Defendant Batong Buhay shall pay the costs."

IT IS SO ORDERED."

(pp. 67-68, Rollo)

The antecedent facts, as found by the Court of Appeals, are as follows

"The defendant Batong Buhay Gold Mines, Inc. issued Stock Certificate No. 16807 covering 62,495 shares with a par value of P0.01 per share to Francisco Aguac who was then legally married to Paula G. Aguac, but the said spouses had lived separately for more than fourteen (14) years prior to the said date. On December 16, 1969, Francisco Aguac sold his 62,495 shares covered by Stock Certificate No. 16807 for the sum of P9,374.70 in favor of the plaintiff, the said transaction being evidenced by a deed of sale (Exhibit D). The said sale was made by Francisco Aguac without the knowledge or consent of his wife Paula G. Aguac.

On the same date of the sale, December 16, 1969, Paula G. Aguac wrote a letter to the president of defendant Batong Buhay Gold Mines, Inc. asking that the transfer of the shares sold by her husband be withheld, inasmuch as the same constituted conjugal property and her share of proceeds of the sale was not given to her (Exhibit 1).

On January 5, 1970, under a covering letter dated December 26, 1969, plaintiff's counsel presented Stock Certificate No. 16807 duly endorsed by Francisco Aguac for registration and transfer of the said stock certificate in the name of the plaintiff (Exhibit F). The said letter was addressed to defendant Del Rosario and Company which was the transfer agent of Batong Buhay at that time. In a letter dated February 24, 1970 also addressed to Del Rosario and Company, plaintiff's counsel requested information as to the action taken on the transfer of Stock Certificate No. 16807 in favor of the plaintiff, nothing about which having heard despite the lapse of over a month (Exhibit H). In a reply letter dated February 28, 1970, Del Rosario and Company informed plaintiff's counsel that Batong Buhay has referred the matter to their attorneys, inasmuch as there was a "technical problem that has developed in the transfer of stock", and further advised that the plaintiff communicate directly with Batong Buhay for further details (Exhibit I).

It developed that when Batong Buhay was about to effect the cancellation of Stock Certificate No. 16807 and transfer the 62,495 shares covered thereby to the plaintiff and had, in fact, prepared new Stock Certificate No. 27650 dated January 5, 1970, it received the letter of Paulo G. Aguac advising it to withhold the transfer of the subject shares of stock on the ground that the same are conjugal property.

On March 12, 1970, Francisco Aguac was charged in a criminal complaint for concubinage filed by Paula G. Aguac before the Municipal Court of Pasil, Kalinga - Apayao, docketed as Criminal Case No. 10, entitled "People vs. Francisco Aguac, et al."

The defendants justify their refusal to transfer the shares of stock of Francisco Aguac, in the name of the plaintiff in view of their apprehension that they might be held liable for damages under Article 173 of the Civil Code and the ruling of the Supreme Court in *Bucoy vs. Paulino*, 23 SCRA 248.

On March 5, 1970, in view of the defendant's inaction on the request for the transfer of the stock certificate in its name, the plaintiff commenced this action before the Court of First Instance of Manila, praying that the defendants be ordered to issue and release the transfer stock certificate covering 62,495 shares of defendant Batong Buhay, formerly registered in the name of Francisco Aguac, in favor of the plaintiff, and for the recovery of compensatory, exemplary and corrective damages and attorney's fees. A writ of preliminary mandatory injunction was prayed for to order the defendants to issue immediately the transfer certificate covering the aforesaid shares of stock of defendant Batong Buhay in the name of the plaintiff.

The trial court granted the prayer for the issuance of the writ of preliminary mandatory injunction in its order of March 16, 1970. In compliance therewith, Stock Certificate No. 16807 was cancelled and new Stock Certificate No. 27650 dated January 5, 1970 was issued to and received by the plaintiff on July 20, 1970."

On October 28, 1971, the trial court handed down its judgment ordering the defendant (herein petitioner) to effect the transfer of the shares covered by Stock Certificate No. 16807 in the name of herein respondent Inco Mining Corporation and declaring permanent the writ of preliminary mandatory injunction issued on March 16, 1970.

Private respondent seasonably appealed the aforesaid decision to the Court of Appeals anchored on the lower court's alleged failure to award damages for the wrongful refusal of petitioner to transfer the subject shares of stock and alleged failure to award attorney's fees, cost of injunction bond and expenses of litigation.

On August 27, 1986, respondent appellate court rendered the subject decision the dispositive portion of which has already been quoted herein-above.

Hence, this petition.

In assailing the decision of the Court of Appeals, petitioner poses the following issues:

1. May the Court of Appeals award damages by way of unrealized profits despite the absence of supporting evidence, or merely on the basis of pure assumption, speculation or conjecture; or can the respondent recover

damages by way of unrealized profits when it has not shown that it was damaged in any manner by the act of petitioner?

2. May the appellate court deny the petitioner the chance to present evidence discovered after judgment which were not only very material to its case, but would also show the untenability and illegality of private respondent's position?

We answer the first issue in the negative.

The petitioner alleges that the appellate court gravely and categorically erred in awarding damages by way of unrealized profit (or *lucro cesante*) to private respondent. Petitioner company also alleges that the claim for unrealized profit must be duly and sufficiently established, that is, that the claimant must submit proof that it was in fact damaged because of petitioner's act or omission.

The stipulation of facts of the parties does not at all show that private respondent intended to sell, or would sell or would have sold the stocks in question on specified dates. While it is true that shares of stock may go up or down in value (as in fact the concerned shares here really rose from fifteen (15) centavos to twenty three or twenty four (23/24) centavos per share and then fell to about two (2) centavos per share, still whatever profits could have been made are purely SPECULATIVE, for it was difficult to predict with any decree of certainty the rise and fall in the value of the shares. Thus this Court has ruled that speculative damages cannot be recovered.

It is easy to say now that had private respondent gained legal title to the shares, it could have sold the same and reaped a profit of P5,624.95 but it could not do so because of petitioner's refusal to transfer the stocks in the former's name at the time demand was made, but then it is also true that human nature, being what it is, private respondent's officials could also have refused to sell and instead wait for expected further increases in value.

In view of what has been said, We find no necessity to discuss the second issue.

WHEREFORE, the assailed decision and resolutions of the Court of Appeals are hereby SET ASIDE, and a new one is hereby rendered REINSTATING the decision of the trial court. No costs.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

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