

FEDERATION OF UNITED NAMARCO DISTRIBUTORS, INC., JUSTO MANALO, ET AL., PLAINTIFFS-APPELLEES, VS. NATIONAL MARKETING CORPORATION, DEFENDANT-APPELLANT.*G.R. No. L-17819. March 31, 1962*

Ponente: BARRERA, J.

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Sometime in 1959, the prices of commodities had gone up to such an extent that the President, in consultation with some officials, sought means to force down such prices. One solution was for the National Marketing Corporation (NAMARCO) to procure, buy, and distribute such commodities as were in short supply, with a special nonrecurring dollar allocation from the Central Bank. But, unfortunately at the time, the activities of the NAMARCO were paralyzed by the picketing of its workers, who were on strike, of the movement of NAMARCO goods. The goods discharged on the Manila piers as well as those in NAMARCO warehouses could not be removed, so much so, that the NAMARCO was unable to distribute them. Should the strike continue, the goods to be imported under said dollar allocation to the NAMARCO would, upon their arrival, be in the same predicament, and the plan to force down the prices of commodities would be frustrated. To forestall such an eventuality, NAMARCO General Manager Benjamin F. Estrella proposed to the President that the importation of commodities be effected for and in the names of various associations composed of regular namarco distributors and/or retailers, to be previously arranged as the beneficiaries of said commodities, by way of trade assistance to each group. Thus, when the goods would arrive, the labor union in the NAMARCO would not prevent their movement, as they would not be NAMARCO goods but of the beneficiary associations.

Various associations of NAMARCO distributors and retailers learned of said plan, which had been concurred in by the President. They therefore submitted to the President their petition for trade assistance for their members. One of these associations is the Federation of United NAMARCO Distributors, Inc., a non-stock corporation wholly composed of recognized regular distributors and retailers of the NAMARCO.

On August 8, 1959, the FEDERATION, through its directors, addressed a letter to the President, soliciting his intervention for the importation, out of the aforementioned dollar allocation of the NAMARCO, and then the allocation to the FEDERATION, of the commodities specified in the annex to said letter, in the aggregate value of \$2,001,031.00. In the same letter, the FEDERATION proposed that it would pay on cash basis the cost of the commodities, plus 5% mark-up payable to the NAMARCO. The commodities would then be distributed among its members and retailers under the NAMARCO's rules and regulations governing the distribution of its goods, and the handling and storage charges thereof would be for the account of the FEDERATION. Acting on said request, the President, on October 27, 1959 noted on top of said letter his approval, thus:

"In line with the general directive sent to arrest rise prices specially with the approach of Christmas, this proposition is O. K. It is desired that the NAMARCO Board pass it."

The NAMARCO Board of Directors, taking cognizance of the letter and of the notation thereon of the President,

adopted on November 3, 1959, Resolution No. 524 (Exh. J) reading as follows:

"RESOLUTION NO. 524

"WHEREAS the President of the Philippines, in his desire to bring down the prices of commodities, especially during the coming Christmas season, issued a directive to the Chairman of the Monetary Board urging that an additional allocation of 10 million dollars be made available for use by the NAMARCO;

"WHEREAS on October 17, 1959, the President of the Philippines issued a directive addressed to Chairman Hernaez and General Manager Estrella directing the NAMARCO to expedite the utilization of 4 million dollars for trade assistance and 6 million dollars for foodstuffs;

"WHEREAS in another directive dated October 27, 1959, in connection with a petition for assistance presented to His Excellency by the Federation of United NAMARCO Distributors, President Garcia expressed his desire that the NAMARCO Board approve the corresponding Resolution; now, therefore, be it

"RESOLVED that the Board of Directors approve as it hereby approves the immediate importation of the following items in the quantities herein mentioned, subject to the approval of the said items by the Central Bank:

"Total..... \$2,001,031.00

x x x (Here follows the list of items authorized to be imported.)

In pursuance to this resolution, the NAMARCO (through its President Manalo), executed the following Contract of Sale (Exh. O) on November 16, 1959:

"CONTRACT OF SALE

"KNOW ALL MEN BY THESE PRESENTS:

"This Contract entered into this 16th day of November, 1959 by and between the NATIONAL MARKETING CORPORATION, a private corporation organized and existing under the laws of the Philippines and owned by the Government, represented in this act by its General Manager, BENJAMIN F. ESTRELLA, and herein referred to as the NAMARCO, and the FEDERATION OF UNITED NAMARCO DISTRIBUTORS, INC., a corporation duly organized and existing under and by virtue of the laws of the Philippines with postal and office address at Room 300 F. C. I. Building, Dasmarinas, Manila, Philippines, and represented in this act by its President, JUSTO MANALO, and herein referred to as the FEDERATION

"WITNESSETH:

"That, WHEREAS, by virtue of NAMARCO Board Resolution dated November 3, 1959, the Management of NAMARCO was authorized to import the following items with the corresponding dollar value totaling TWO MILLION ONE THOUSAND THIRTY ONE DOLLARS (\$2,001,031. 00); to wit: x x x (here follows the list)

"That, WHEREAS, for and in consideration of the sum of TWO HUNDRED THOUSAND PESOS (P200,000.00) as part payment of the items and/or merchandise above-mentioned, and deposited by the FEDERATION with the NAMARCO upon signing of this Contract, and the balance of the enumerated items and/or merchandise shall be paid on cash basis' upon delivery of the duly Endorsed negotiable shipping documents covering the same, the NAMARCO agrees to sell the said items and/or merchandise subject to the following terms and conditions:

"1. That the FEDERATION shall pay the NAMARCO the value of the goods equivalent to the procurement cost plus 5% mark-up, provided, however, that should there be any adjustment in the procurement cost the

same shall be refunded to the FEDERATION;

"2. That all handling and storage charges of the goods sold shall be for the account of the FEDERATION:

"3. That the FEDERATION waives its right to claim for any loss or damage that may be suffered due to force majeure such as war, riots, strikes, etc., except when such incident is directly or indirectly due to the negligence of the NAMARCO or its representative;

"4. That the items and/or merchandise sold by NAMARCO to the FEDERATION shall be distributed among its members and retailers in accordance with NAMARCO's existing rules and regulations governing the distribution of NAMARCO goods and at wholesale and retail prices to be determined by NAMARCO;

"5. That if it should be necessary to file a suit for the violation of any of the terms and conditions of this Contract, such action shall be presented only in the Court of First Instance of Manila.

"IN WITNESS WHEREOF, the parties hereto have executed these presents the FEDERATION through JUSTO MANALO in his capacity as President of the FEDERATION OF UNITED NAMARCO DISTRIBUTORS and the NAMARCO, through BENJAMIN F. ESTRELLA, in his capacity as Manager of the NATIONAL MARKETING CORPORATION hereunto duly authorized this 16th day of November, 1959 in the City of Manila, Philippines.

NATIONAL MARKETING

FEDERATION OF UNITED

CORPORATION

NAMARCO DISTRIBUTORS

(SELLER)

(BUYER)

BY: (SGD.) BENJAMIN F. ESTRELLA

BY: (SGD.) JUSTO MANALO

Manager

President

Three days later, or on November 19, 1959, the NAMARCO Board of Directors approved Resolution No. 530 (ExK 10-A), to wit:

"RESOLUTION NO. 530

"RESOLVED that, in connection with the importation of \$2,001,031.00 worth of controlled goods, authorized under a Board Resolution of November 3, 1959 (82nd regular meeting the Board, amends, as it hereby amends said Resolution, by adding to the same the following provision:

"RESOLVED FURTHER that:

"1. In the procurement and distribution of the goods to be imported, the forward sales method or any other

similar method shall not be used;

"2. This importation shall be a regular importation of the NAMARCO; and

"3. The goods shall be distributed and allocated only to regular NAMARCO outlets in accordance with regular practices and rules and regulations of the NAMARCO governing distributors and allocation of goods."

In implementation of paragraph 2 of said Contract of Sale (Exh. O) which provides that the handling and storage charges of the goods sold shall be for the account of the FEDERATION, the latter on the same date (November 19) made arrangements with the owner of the Pasig River Bodegas for such purpose. The FEDERATION submitted to the NAMARCO a signed copy of the agreement (Exh. P), with the request that the NAMARCO give its consent thereto and to inform the warehouse of that fact (Exh. P-1). On December 8, 1959, the NAMARCO, by letter (Exh. P-2) addressed to the Pasig River Bodegas, copies of which were furnished the FEDERATION and the NAMARCO's Traffic Storage Department, signified its confirmation of said agreement (Exh. P) and directed the Pasig River Bodegas not to release any of the commodities "without the approval of the proper authorities which in this case will be the receipt of payment made by the abovementioned Federation" to the NAMARCO.

On December 17, 1959, the Federation, pursuant to the terms of the contract of sale, deposited with the NAMARCO the sum of P200,000.00 as part payment of the purchase price of the commodities. On that same date, General Manager Estrella endorsed to NAMARCO Auditor Liboro "for examination and review, the Contract of Sale entered into between the NAMARCO" and the FEDERATION. In a 1st Indorsement dated December 21, 1959 (Exh. a) to the NAMARCO Board of Directors, Liboro requested for information—

"x x x as to whether Resolution No. 530, nullifies the attached contract of sale executed in accordance with Resolution No. 524 in relation to the directive of the President, dated October 27, 1959, approving the petition of the Federation of United Namarco Distributors, Inc., if not, then it is requested that the contract be first approved by the Board before it is forwarded to the Auditor-General for examination and review, pursuant to Office Memorandum No. 140, of the General Auditing Office, dated February 5, 1959."

Acting on the above indorsement, of the NAMARCO Auditor, the NAMARCO Board of Directors, on January 12, 1960, approved Resolution No. 14 (Exh. II), which states:

"RESOLUTION NO. 14

"Resolved that the Board of Directors approve, as it hereby approves, the contract entered into by and between the NAMARCO and the Federation of United NAMARCO Distributors, Inc., for the sale of \$2,001,031.00 worth of NAMARCO commodities, executed on November 16, 1959, which contract is the subject of an inquiry of the Auditor in his 1st indorsement dated December 21, 1950, the approval hereof to be subject to the terms and conditions laid down by the Board in Resolution No. 524 adopted on November 3, 1959, and in Resolution No. 530 adopted on November 19, 1959."

Subsequently, on January 22, 1960, the contract of sale (Exh. O) in question was forwarded to the Auditor General (Exhs. 5, 6, and 7) for examination and review, in accordance with the provisions of Administrative Order No. 290 dated February 3, 1959 of the President.

In the meantime, beginning on December 12, the commodities started to arrive (Exhs. S, S-1, S-2, S-3, T, T-1, T-2, T-3, U, U-1, U-2, U-3, V, V-1, V-2, V-3, W, W-1, W-2, W-3, X, S-1, X-2, Y, Y-1, Y-2, Z, Z-1, Z-2, AA, AA-1, AA-2, BB, BB-1, BB-2, LL, LL-1, to LL-21), and the FEDERATION, in compliance with the terms of the contract of sale proceeded to pay to the NAMARCO all through the months of December and January the full value of the merchandise that had been arriving (Exhs. EE-1 to EE-7, FF-1, FF-4, FF-7, FF-12, FF-15, FF-18, FF-20, FF-24, FF-26, FF-30, FF-33, FF-35, FF-37, FF-39, FF-40, FF-42, FF-43, FF-45, and FF-47), the total

amount of which payments aggregated to P2,452,020.00. In consideration of such payments, the NAMARCO also in accordance with the contract of sale invoiced to the FEDERATION such items as had been paid for, setting forth in each invoice the items covered, the purchase price due the namarco, and the amount applied thereto, with indication of the numbers of the latter's official receipts of the respective deposits from which that amount was taken (Exhs. FF, FF-2, FF-3, FF-5, FF-6, FF-8, FF-9, FF-10, FF-11, FF-13, FF-14, FF-15, FF-16, FF-17, FF-19, FF-21, FF22, FF-23 FF-25, FF-27, FF-28, FF-29, FF-31, FF-32, FF-34, FF-36, FF-38, FF-41, and FF-46). On the faith of these invoices, upon their presentation to the Pasig River Bodegas, and in accordance with the prior direction by the NAMARCO to said bodegas that the approval of the NAMARCO to release the commodities stored would be the receipt of the payment made to the NAMARCO by the FEDERATION (Exh. P-2), the Pasig River Bodegas released to the FEDERATION the commodities covered by the above-mentioned invoices (Exhs. MM, MM-1 to MM27).

On January 25, 1960, a new Board of Directors and General Manager took over the management of the NAMARCO, and this new management decided to discontinue compliance by NAMARCO of the contract of sale (Exh. O) with respect to the commodities not actually delivered, and it so notified the FEDERATION (Exh. GG and GG-1).

The FEDERATION, therefore, on March 2, 1960 filed a complaint (Civil Case No. 42684) in the Court of First Instance of Manila against the NAMARCO, to compel the latter to perform the Contract of Sale (Exh. O) as to what was left of the commodities subject matter thereof, after the aforementioned releases of nearly over one-half of the entire quantity of the commodities to the federation by the NAMARCO. The complaint described the remaining commodities, being therefore the subject matter of the FEDERATION's action, as follows: 1,059 bags of Cocoa Beans, 17 bales of Khaki Twill, 350 cases of Transformers, 1,400 cases of Oranges, 1,000 cases of Oranges, 73 bales of Blue Denims, 17 bales of Textiles (which at the time of the filing of the complaint were stored in the Pasig River Bodegas), 112 cases of Cotton Khaki Twill And 14,210 cases of Vetrified Tiles (which arrived in Manila a few days before the filing of the complaint), and 999,071 yards Blue Denims, 236,700 yards De Luxe Khaki, 200,000 yards Bostann Khaki, 123 cases of Flashlight cases and bulbs, 80,000 yards Halcoluxe Khaki, 637,755 Labs. Jalco Petrolatum, 235,800 pieces Electric Transformers, 3,000 kilos Monofilament Lines (which according to the complaint, were due to arrive in Manila).

On motion of the FEDERATION and upon order of the trial court in which the NAMARCO acquiesced (Exhs. R, R-I to R-II), the aforementioned last two groups of commodities were transferred to the Pasig River Bodegas from the Manila piers.

Defendant NAMARCO under the entirely new Board of Directors and General Manager, set up the defense in its answer dated March 19 that the Contract of Sale (Exh. O) in question was executed by then NAMARCO General Manager Estrella without the authority of the former Board of Directors; that the contract lacks the approval of that body; that it was not approved by the Auditor General; that under Resolution No. 530, adopted on November 19, 1959, the commodities specified under Resolution No. 524 adopted on November 3, 1959 by the former board of directors, should be distributed and allocated only to regular outlets of the defendant in accordance with the defendant's regular practices, rules and regulations governing distribution and allocation of goods; that the defendant adopted a program of trade assistance by virtue of which distribution of defendant's goods should be made through duly designated or appointed distributors or by trailers by the defendant, as prescribed in its Administrative Order No. 44-A, dated December 5, 1956; and that assuming that the contract of sale was validly entered into by the defendant, the latter is no longer obligated to perform its obligations thereunder for the reason that the plaintiff FEDERATION has violated its terms and conditions.

On the same date the complaint was filed, upon application of the FEDERATION, the trial court issued a writ of

preliminary injunction, enjoining the NAMARCO or any of its representatives from allocating the commodities listed in the complaint to distributors other than those who are members of the FEDERATION. The NAMARCO filed a motion to dissolve the injunction issued by the trial court, which motion was opposed by the FEDERATION who reiterated, among others, that they "have always been and still are willing to take deliveries" of the commodities covered by the injunction and to pay for them through the NAMARCO, in accordance with the terms and conditions of the contract of sale (Exh. O).

On March 26, 1960, the trial court, upon motion of FEDERATION, ordered the release to the latter of among others, "2,400 cases of mandarin oranges provided they are in good condition, or only so much thereof that are in good condition" against payment already made by the FEDERATION to the NAMARCO. After examination by a disinterested third party, as directed by the trial court wherein it was found that only 445 cases of the oranges ordered delivered to the FEDERATION were in good condition, the trial court allowed the FEDERATION to take delivery of such 445 cases only, and made the corresponding adjustments in the application of the payments made by the FEDERATION to the NAMARCO.

After trial, the court rendered judgment on October 15, 1960, the dispositive part of which reads:

"IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, the defendant (NAMARCO) is hereby sentenced:

"To specifically perform the contract of sale, Exhibit 'O', by delivering the following commodities:

1,059 bags of Cocoa Beans
17 bales of Khaki Twill
350 cases of Transformers
1,400 cases of Oranges
1,000 cases of Oranges
73 bales of Blue Denims
17 bales of Textiles
113 cases Cotton Khaki Twill
14,200 cases Vetrified Tiles
999,071 yards Blue Denims
236,700 yards De Luxe Khaki
200,000 yards Bostann Khaki
128 cases of Flashlight cases and bulbs
80,000 yards Halcoluxe Khaki
637,755 Labs. Jalco Petrolatum
235,800 pcs. Electric Transformers
3,000 kilos Monofilament Lines

to plaintiff FEDERATION, upon the payment of the procurement cost, plus 5% mark-up, of such commodities;

"To pay to the plaintiffs the sum equivalent to 5% of said procurement cost, in Philippine Currency, as attorney's fees, and the costs of this suit;

"To reimburse plaintiff FEDERATION the storage charges at the agreed rate upon under Exhibit 'P7' from March 2, 1960 until the date or dates of deliveries thereof to said plaintiff under this decision.

"The writ of preliminary prohibitive injunction issued in this case is hereby declared permanent.

"SO ORDERED"

Within the reglamentary period, the namarco perfected its appeal from said decision to this Court (docketed as G. R. No. L-17819).

On October 31, 1960, the FEDERATION filed a motion for execution of said decision, invoking Section 2, Rule 39 of the Rules of Court, alleging that the commodities subject matter of said decision will deteriorate by mere lapse of time, and may be destroyed by elements of nature and insect pests during the pendency of the appeal; that marketing of the commodities would help stabilize the selling prices thereof; that the public service function of the NAMARCO will be accomplished if the commodities would be sold to the public through the FEDERATION; and that delivery of the commodities to the FEDERATION pending appeal would not cause injury to the NAMARCO, because payment thereof would be made, thereby enabling the NAMARCO, to utilize the proceeds of the sale for the duration of the appeal.

The NAMARCO vigorously objected to said motion for execution, on the grounds that the commodities in question would not by their very nature deteriorate through storage during the pendency of the appeal; that the public service function of the NAMARCO cannot be substituted by private entities or individuals; that release to and marketing by the FEDERATION of said commodities pending appeal, will defeat the purpose for which the NAMARCO was organized, because if the decision of respondent Judge appealed from be reversed, there would be no merchandise to be distributed by it to Filipino retailers and businessmen; that there is no circumstance justifying immediate execution of the judgment appealed from; that special execution would render academic the appeal, and that the NAMARCO is willing and ready to file the necessary supersedeas bond to be approved by the court, in order to stay the execution of the judgment appealed from.

Notwithstanding said opposition by the NAMARCO the trial judge, on November 15, 1960, issued a special order denying the NAMARCO's offer to file supersedeas bond and directing the special execution of the judgment (of October 15, 1960). Said special order reads, in part, as follows:

"This Court takes judicial notice of the fact that the President of the Philippines had declared the existence of a state of public calamity in Manila, Quezon City, Pasay City, and the provinces of Rizal, Bulacan, Nueva Ecija, Tarlac, and a few other provinces. Even assuming that the plaintiffs (herein respondents FEDERATION, et al.) have their places of business in Manila, as defendant (herein petitioner NAMARCO) claims, the consumers, not only in Manila, but also in the neighboring cities and provinces mentioned will be benefited by the marketing of the goods subject matter of the judgment, because of the proximity of those cities and provinces to Manila.

"The ground of the opposition that to allow plaintiffs to distribute the goods in question now will defeat the purpose for which defendant was created, is without merit. By law, the defendant must market its merchandise through duly appointed distributors or retailers. There is no question that the plaintiffs (other than plaintiff corporation) and the other members of the plaintiff corporation, are duly appointed Filipino distributors or retailers of the defendant, and no others have made any claim to participate in the distribution of such goods. The public service which the defendant is required to render by the law will thus be accomplished by the distribution of said goods through the plaintiffs.

"The goods subject matter of the judgment will deteriorate during the pendency of the appeal. Even a relatively slight deterioration would, undoubtedly, be sufficient to impair their market value as first hand goods, hence, keeping these goods in storage while defendant's appeal is pending will render the judgment in favor of plaintiff's ineffectual, as their interest in such goods is not that of consuming, but of marketing them.

"Defendant also contends that damages will be sustained by it and by the public, if the judgment is executed and it is reversed on appeal. It appears, however, that the only pecuniary interest of the defendant in the goods subject matter of the judgment is the recovery of the landed cost, plus 5% mark-up. This amount will, by the terms of the judgment, be paid to defendant upon delivery of the goods to the plaintiffs. As to the damage that

will allegedly be caused to the public, defendant has not shown what such damage would be. On the contrary, the public will be benefited by the immediate execution of the judgment, as stated in plaintiff's motion, because such goods will be made available to them at the time of their greatest need, and will greatly assist in keeping the prices of such commodities at reasonable levels.

"It appears to the Court that the appeal is frivolous and is being taken only for the purpose of delay. Admittedly, the defendant had already taken advantage of the benefits of said contract of sale, namely, the receipt by the defendant of the payment in the amount of P830,000.00 and P1,628,242.96 from plaintiff FEDERATION prior to the institution of this action, and the defendant's agreement that the handling and storage charges of the commodities are for the account of plaintiff FEDERATION as stipulated in the contract of sale, which the latter has been paying. Admittedly also, the contract of sale had been formally approved by defendant's board of directors and, therefore, the defendant's challenge that said contract is without approval of that body is gratuitous. This is another good and sufficient reason for the special execution of the judgment regarding the specific performance of the contract.

"The defendant's Administrative Order No. 44-A which is exhibited, provides that the selling prices of its distributors or retailers shall be 'at predetermined ranges of percentage below current wholesale and retail market prices taking into account consumer purchasing power that such prices 'shall be subject to re-examination' dependent on certain reports of indentors, expected arrivals of merchandise, existing stocks, and existence of locally manufactured products. There is, therefore, no way of determining the prices at which the plaintiffs will sell the goods subject matter of this judgment, nor, consequently, of determining their profits. Hence, there is no way of determining the amount of damage that plaintiffs may suffer by the stay of special execution. No amount can, therefore, be fixed for, a supersedeas bond. Besides, the compelling, urgent reason for the special execution of the judgment outweigh the stay thereof by a supersedeas bond.

"Finding the reasons given by plaintiffs in their motion which are reproduced above, to be well-taken, the Court, therefore, considers the special execution of the judgment (of October 15, 1960) justified.

"WHEREFORE, plaintiffs motion is hereby granted; defendant's offer to file a supersedeas bond is hereby denied; and the special execution of the judgment, insofar as it orders the defendant to specifically perform the contract of sale, Exhibit 'O' by delivering the commodities of United NAMARCO Distributors, Inc., upon the payment of the procurement costs, plus 5% mark-up, of such commodities, is hereby ordered. "SO ORDERED."

From said special order of execution (of November 15, 1960), the NAMARCO instituted in this Court (G. K. No. L-17768) a petition for certiorari with preliminary injunction. In due time, we issued the preliminary injunction prayed for, enjoining respondent Judge from carrying out said special order of execution and respondent sheriff of Manila from executing the judgment of October 15, 1960, upon the NAMARCO's filing a bond of P50,000.00.

G. R. No. L-17819:

The principal issue to be resolved in this appeal is whether the Contract of Sale (Exh. O) in question is binding on appellant NAMARCO.

There is no dispute that on January 12, 1960, appellant's Board of Directors adopted Resolution No. 14, formally approving said contract. Appellant, however, maintains that said resolution did not approve said contract, because the latter is inconsistent with the terms and conditions laid down by the Board of Directors in its Resolution No. 530 (Exh. 10-A) adopted on November 19, 1959. The alleged inconsistency lies in the facts that while Resolution No. 530 prohibits "forward sales", said contract partakes of the nature of a "forward sale", as it is a sale of merchandise before its arrival; and under paragraph 3 of Resolution No. 530, it is appellant that should distribute and allocate the merchandise in question to regular NAMARCO outlets, whereas under paragraph 4 of said contract, appellee FEDERATION is the one authorized to distribute the merchandise among its members and

retailers.

It is to be noted that precisely because of this seeming discrepancy, the NAMARCO's own auditor Liboro requested clarification from appellant's Board of Directors in his communication of December 21 (Exh. "2"), asking specifically if Resolution No. 530 "nullifies the attached contract of sale executed in accordance with Resolution No. 524 in relation to the directive of the President, dated October 27, 1959, approving the petition of the Federation of United NAMARCO Distributors, Inc., if not, then it is requested that the contract be first approved by the Board before it is forwarded to the Auditor General for examination and review, pursuant to Office Memorandum No. 140, of the General Auditing Office, dated February 5, 1959." Acting upon this inquiry, appellant's Board of Directors approved and adopted, as heretofore stated, its Resolution No. 14, specifically approving the contract of sale (See Resolution No. 14, *supra*). As a result of said resolution, appellant's Auditor Liboro, on January 22, 1960, forwarded the contract of sale to the Auditor General, with the comment that—

"On January 12, 1960, the Board, in its Resolution No. 14, approved the said contract of sale subject to the terms and conditions laid down by the Board in its Resolution No. 524, dated November 5, 1959, and its Resolution No. 530 Dated November 1959 (*Italics supplied*). In other words the Board believes that instead of being conflicting, Resolution No. 530 compliments only Resolution No. 524." (See Exh. 5)

In other words, the General Manager, the auditor and the Board of Directors itself, of appellant NAMARCO, all understood the contract of sale to be in accordance with the resolution of its governing body and is, therefore, binding upon it.

To subscribe to appellant's theory that its then Board of Directors had not, by Resolution No. 14 approved said contract because of its inconsistencies with the conditions laid down in Resolution No. 530, to which the approval was made subject, would be to ascribe to said board a gross inconsistency and a meaningless and inutile act. For, it is illogical and unreasonable to suppose that the board would, in the last part of Resolution No. 14, impliedly take away what in the first part of the same resolution it had expressly given, namely, its approval of the contract of sale. Conformably to the rule in interpretation of contracts, Resolution No. 14 should be construed in such a manner as to render effectual its approval of the contract (Art. 1373, Civil Code).

The provisions of paragraph 1 of Resolution No. 530 which prohibits "forward sales" should be considered applicable only to the distribution of the goods to the retailers. In other words, appellee FEDERATION should not allocate or distribute the merchandise covered by the contract of sale to its members-retailers prior to the arrival of the merchandise in the Philippines. As this requirement was complied with, the NAMARCO had no reason to suspend carrying out the contract on this score.

As to the other contention of appellant that under paragraph 3 of Resolution No. 530, the distribution of the goods should be made by the NAMARCO and not by the FEDERATION, a reading of this paragraph will readily show that the only requirement is that, "the goods shall be distributed and allocated in accordance with regular practices, rules and regulations of the NAMARCO governing distribution and allocation of goods." There is no mention as to who will allocate them. This requirement is satisfied by the fact that all the members of appellee federation are regular outlets of appellant in good standing, as the latter itself had admitted (Exhs. D-1, F, G, G-1, and G-4). On this point, the trial court correctly observed:

"Counsel for the defendant NAMARCO argued that, according to the testimony of Rodolfo E. Tecson, supervisor of defendant's Marketing Department, who was a witness for the defendant, it is a regular practice of defendant corporation that goods imported should be allocated and distributed to all regular NAMARCO outlets or distributors who are willing to purchase and market the same. The witness said so. But with respect to the importation now under consideration, the fact is that it is an exception to such regular practice, in that it was recommended to the defendant's board of directors by the President of the Philippines to be distributed,

through the FEDERATION, among the defendant's distributors and retailers who are members of the FEDERATION, the defendant's board of directors acquiesced in that recommendation as its Resolution No. 524 shows, and it was implemented with the execution of the contract of sale so as to defeat the effects of the strike on the defendant against the distribution of its goods. On the other hand, it is not shown that other distributors or retailers of the defendant, who are not members of the FEDERATION also are willing to purchase and market said commodities. x x x. Resolution No. 530 does not require that the commodities subject matter of said contract of sale should be distributed to all regular outlets of the defendant; it states that the goods shall be distributed and allocated only to regular NAMARCO outlets x x x, meaning that, considering the fact that Resolution No. 530 is but amendatory to Resolution No. 524, only the FEDERATION'S members who are defendant's regular outlets should participate in the distribution of said commodities. The requirement is satisfied by the fact that all the FEDERATION'S members are defendant's regular outlets as the defendant itself has admitted. At any rate, the contract of sale in question having been formally approved by defendant's board of directors and the defendant thereby is bound, the provisions of said contract should be followed, one of which provides 'that the items and/or merchandise sold by NAMARCO to the FEDERATION shall be distributed among its members and retailers in accordance with NAMARCO's existing rules and regulations governing the distribution of NAMARCO goods x x x."

Moreover, at the time the new Board of Directors refused to recognize the validity of the contract of sale, more than half of the goods had already been delivered by NAMARCO to the FEDERATION who already disposed of them, and for which NAMARCO has accepted partial payments of the purchase price of the commodities amounting to P2,452,020.00. All these took place before and | after the adoption of Resolution No. 14 on January 12, 1960. Appellant's acceptance of said benefit under the contract of sale, constitutes an implied ratification by its board of directors of the contract in question, and precludes the rejection of the binding effect of said contract.

Appellant next contends that the contract of sale in question has not yet been perfected or consummated, because it had not been approved by the Auditor General, in accordance with Administrative Order No. 290, dated February 3, 1959 which in part reads;

"In the interest of public service, and as a provisional measure pending enactment by the Congress of appropriate legislation on the matter, If Carlos P. Garcia, President of the Philippines, pursuant to the powers vested in me by law, do hereby require that all contracts of whatever nature involving P10,000.00 or more to be entered into by all bureaus and offices, agencies and instrumentalities of the National Government, and those of government owned and controlled corporations, x x x be submitted to the Auditor General for examination and review before the same are perfected and/or consummated.

"If the Auditor General interposes any objection to the proposed contract, the matter shall be submitted to the President for final decision."

There seems to be no basis for this contention. In the first place, the administrative order appears to refer to contracts, in general, ordinarily entered into by government offices and government-owned or controlled corporations. The contract here involved is for a special purpose, to meet a special situation and entered into in implementation of a Presidential directive issued to solve an emergency created by rising prices of commodities. In other words[^] it was a previously authorized specific transaction already bearing, as it does, the approval of the President who, under the administrative order invoked, has the final say.

In the second place, there appears no reason for the rejection of the contract, as the NAMARCO Auditor himself, in his 3rd endorsement of January 22, 1960 (Exh. 5) found no objection to the same.

Thirdly, as already stated, payments to an aggregate of over P2,000,000.00 had been accepted with the evident approval of the Auditor, in compliance with the contract.

Appellant also claims that the trial court erred in allowing to take delivery of 445 cases of oranges only, instead of 2,400 cases, in effect, charging it (appellant) for the loss of 1955 cases.

The claim is unmeritorious. Let it be remembered that as early as January 25, 1960, appellant had refused to deliver the Imported commodities to appellee. It is true that on March 2, 1960, the FEDERATION, upon filing its complaint, obtained a writ of preliminary injunction to prevent NAMARCO from disposing of these goods through other distributors or retailers, but the FEDERATION was willing to accept, and in fact has been requesting, the delivery of the same to it or its members for sale to the general public, but NAMARCO refused to make such delivery. It was only on March 26, 1960, that the trial court, upon appellee's motion, ordered the release to it of, among others, "2,400 cases of mandarin oranges provided they are in good condition, or only so much thereof that are in good condition." Consequently, the FEDERATION could not be blamed for refusing to take delivery of the oranges that had in the meantime become spoiled during the period of from January 25 to March 26. In the circumstances, it is but proper that appellant must bear the loss (the rotting of 1955 cases of oranges) occasioned by its own fault.

Appellant asserts that the trial court likewise erred in holding it liable for storage charges from March 2, 1960 (date of filing of appellee's complaint in the lower court) of the commodities covered by the contract of sale in question.

The argument merits no serious consideration. It is true that under the contract of sale the handling and storage charges of the commodities covered thereby are for the account of appellee FEDERATION. However, the storage charges that became due from the date the goods had to remain in the warehouse because of the refusal of namarco to deliver the same to the FEDERATION which had been demanding the surrender thereof to it, can not be charged to the FEDERATION, but to NAMARCO as the one who, in the performance of its obligations under the contract, has been guilty of delay in the delivery of the goods subject matter thereof. (Arts. 1169 and 1170, Civil Code).

Lastly, appellant claims that the trial court erred in holding it liable to pay to appellees a sum equivalent to 5fo of the procurement cost as attorney's fees.

The claim has some merit. We have repeatedly held (*Jimenez vs. Bucoy*, 103 Phil., 40; 54 Off. Gaz., [32] 7560; *Castillo vs. Samonte*, 106 Phil., 1023), that to justify allowance of attorney's fees, the trial court must state in its decision the reason why such fees are being awarded to the winning party. As it does not appear that appellant had acted in gross and evident bad faith in refusing to perform the contract of sale in question, and there are in the text of the decision appealed from no reasonable or equitable grounds for allowing award of attorney's fees to appellees, the same are disallowed.

G.R. No. L-17768:

The sole issue for determination in this case is whether respondent Judge acted with grave abuse of discretion amounting to lack of jurisdiction in issuing the special order of execution in question.

We have repeatedly held that there is grave abuse of discretion justifying the issuance of the writ of certiorari, when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction (*Hamoy vs. Secretary*, 106 Phil., 1046, citing *Abad Santos vs. Province of Tarlac*, 67 Phil., 480; *Tan vs. People*, 88 Phil., 609; *Rueda vs. CAR*, 106 Phil., 300; 59 Off. Gaz. [5] 708; and *Liwanag vs. Castillo*, 106 Phil., 375; 57 Off. Gaz. 1962), as where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law (*TaveraLuna, Inc. vs. Nable*, 67 Phil. 340; *Alafriz vs. Nable*, 72 Phil. 278).

Section 2, Rule 39 of the Rules of Court, provides:

"Sec. 2. Execution discretionary.—Before the expiration of the time to appeal, execution may issue, in the discretion of the court, on motion of the prevailing party with notice to the adverse party, upon good reason to be stated in a special order. x x x."

Under this provision, it is quite clear that prior to the expiration of the time to appeal, the court may issue execution on motion of the prevailing party and with notice to the adverse party, upon good reasons to be stated in a special order (*Papa vs. Castelo*, Lr-3891, July 30, 1951). The power to grant or deny a motion for execution is discretionary with the court (*Federal Films vs. Ocampo*, 78 Phil., 472, 479; 44 Off. Gaz. 3819). Accordingly, the appellate court will not interfere to modify, control, or inquire into the exercise of this discretion, unless it be shown that there has been an abuse thereof (*Calvo vs. Gutierrez*, 4 Phil., 203; *Case vs. Metropole Hotel*, 5 Phil., 49; *Gamay vs. Gutierrez David*, 48 Phil., 768; *Buenaventura vs. Pena*, 78 Phil., 795; 44 Off. Gaz., 4923; *Ong Sit vs. Piccio*, 78 Phil., 785; 44 Off. Gaz., 4915; *Naredo vs. Yatco*, 80 Phil., 220; 45 Off. Gaz., 3390).

In granting the special execution of the judgment in question, respondent Judge stated good reasons, in his special order of execution, as required by the above-quoted provision of the Rules of Court, namely: (1) consumers, not only in Manila, but also in the neighboring provinces and cities will be benefited by the marketing of the goods subject matter of the judgment; (2) the public service which petitioner NAMARCO is required by law to render, will be accomplished by the distribution of said goods through respondents FEDERATION, et al.; (3) the goods subject matter of the judgment will deteriorate during the pendency of the appeal; (4) a slight deterioration of said goods will be sufficient to impair their market value as first hand goods, hence, keeping them in storage while petitioner namarco's appeal in Civil Case No. 42684 (G. R. No. L-17819) will render the judgment in favor of respondents FEDERATION, et al. ineffectual, as their interest in such goods is not that of consuming, but of marketing them; (5) and the appeal in Civil Case No. 42684 (G. R. No. L-17819) is frivolous and is being taken only for the purpose of delay.[1] And, in refusing petitioner NAMARCO's offer to put up a supersedeas bond to stay said special execution, the trial court reasoned out, and we "believe correctly, that there is no way of determining the prices at which respondents FEDERATION, et al., will sell the goods subject matter of the judgment, or of determining their profits; consequently, there is no way of determining the amount of damage that respondents FEDERATION, et al. may suffer by the stay of the special execution, and no amount can, therefore, be fixed for the supersedeas bond. The trial court went on to say that "the compelling urgent reasons for the special execution of the judgment outweigh the stay thereof by a supersedeas bond."

For all the foregoing, we are of the opinion and so hold, that the trial Judge, in issuing the special execution of its decision (of October 15, 1960), did not act with grave abuse of discretion amounting to lack of jurisdiction.

JUDGMENT

G. R. No. L-17819: The decision of the trial Judge appealed from, except that portion awarding attorney's 1 See *Presbitero vs. Bodas*, 73 Phil., 300, *Iloilo Trading Center vs. Bodas*, 73 Phil., 327, which hold that when the appeal is being taken for purposes of delay, the trial court may properly deny stay of execution fees to appellees FEDERATION, et al., is affirmed in all respects, with costs against appellant NAMARCO.

G. R. No. L-17768: The special order of execution (of November 15, 1960) is affirmed. Writ of certiorari is denied and the preliminary injunction heretofore issued by this Court is ordered dissolved. With costs against petitioner NAMARCO. So ordered.

Bengzon, C.J., Bautista Angelo, Labrador, Concepcion, Paredes, Dizon, and De Leon, JJ., concur.
Padilla, J., took no part.

[1] See *Presbitero v. Rodas*, 73 Phil. 300 ; *Iloilo Trading Center v. Rodas*, 73 Phil. 327, which hold that when the appeal is being taken for purposes of delay, the trial court may properly deny stay of execution.

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