

MARSMAN & COMPANY, INC., PETITIONER, VS. FIRST COCONUT CENTRAL COMPANY, INC., RESPONDENT.

G.R. No. L-39841. June 20, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.

Is the sale of industrial machinery covered by the Anti-Dummy Law and the Retail Trade Nationalization Law? This is the issue in this petition for review on certiorari assailing the decision of the Court of Appeals dated September 16, 1974 which reversed the decision of the Court of First Instance and the denial of a motion for reconsideration thereof.

The facts of the case as narrated in the decision of the Court of Appeals are as follows:

"On January 26, 1967, the First Coconut Central Co., Inc. purchased on installment one diesel generating unit worth P21,000.00 from Madrid Trading. As down payment, the defendant company paid the amount of P4,000.00 to Madrid Trading which issued official receipt No. 02248. The diesel generating unit was received by the defendant company on January 27, 1967 as shown by Invoice No. 214 (Exhibit C), where it also provided for the payment of the balance of P17,000.00 in three (3) equal monthly installments to begin from date of delivery with usual clause on interests and attorney's fees. As security for the satisfaction of the said obligation, a chattel mortgage (Exhibit H) over the same diesel generating unit was constituted by the defendant First Coconut Central Co., Inc. in favor of Madrid Trading. On January 26, 1967, Madrid Trading assigned all its rights under the chattel mortgage to the herein plaintiff, Marsman & Company, Inc. by virtue of a Deed of Assignment (Exhibit B). On March 28, 1967, the defendant company paid Marsman & Company, Inc. the sum of P2,000.00, leaving a balance of P15,000.00.

"On September 13, 1967, the plaintiff company notified the defendant First Coconut Central Company, Inc. of its 'long overdue and outstanding account' in the amount of P15,000.00. On September 25, 1967, the defendant company wrote Marsman & Company, Inc., appealing that they be given thirty (30) days to settle the obligation, and enclosing in said letter a check for One Thousand Pesos (P1,000.00). On October 30, 1967, after repeated failure by the defendant company to meet its obligation, plaintiff Marsman & Company, Inc. brought this action to recover the balance of defendant company's account in the sum of Fourteen Thousand Pesos (P14,000.00).

"After hearing, the Court of First Instance of Manila, Branch II, handed down its decision, ordaining in its dispositive portion:

"WHEREFORE, judgment is rendered in favor of the plaintiff and against the defendant in the amount of P14,000.00, with interest at the rate of 12% per annum from September 25, 1967, and to pay attorney's fees in the amount of P-2,000.00 and the costs of the suit.

"SO ORDERED." [1]

Defendant First Coconut Central Co., Inc., not satisfied with the decision of the trial court appealed to the Court

of Appeals. On September 16, 1974, the Court of Appeals rendered the decision now sought to be reviewed in the instant petition. The decision stated that the sale in question violated Republic Act No. 1180 (the Retail Trade Nationalization Law), the dispositive portion of which reads as follows:

"WHEREFORE, the appealed judgment is hereby set aside, and another one entered, dismissing the plaintiff-appellee's complaint and the defendant-appellant's counterclaim; and ordering the defendant-appellant to return the diesel generating unit in question to the plaintiff-appellee, and on the part of the defendant-appellant to return the amount of P7,000.00 to the plaintiff-appellee. NO PRONOUNCEMENT AS TO COSTS."[2]

The above-quoted dispositive portion was, upon motion of respondent First Coconut Central Co., Inc., modified by the Court of Appeals in its resolution of October 15, 1974 so as to correct alleged clerical errors contained therein. The dispositive portion of the said resolution, as modified, reads as follows:

"WHEREFORE, the dispositive portion of our decision of September 16, 1974 in the above-entitled case is hereby AMENDED to read as follows:

'WHEREFORE, the appealed judgment is hereby set aside, and another one entered, dismissing the plaintiff-appellee's complaint and the defendant-appellant's counterclaim; and ordering the defendant-appellant to return to diesel generating unit in question to the plaintiff-appellee, and on the part of the PLAINTIFF-APPELLEE to return the amount of P-7,000.00 to the DEFENDANT-APPELLANT. NO PRONOUNCEMENT AS TO COSTS.'"[3]

A motion for reconsideration was filed by petitioner on October 10, 1974 but was denied by the Court of Appeals for lack of merit in its resolution of November 26, 1974.[4] Hence, the instant petition.

Specifically, petitioner assigns the following errors:

"I. THE SALE OF INDUSTRIAL MACHINERY FOR USE BY THE INDUSTRIAL PLANT DOES NOT CONSTITUTE 'ENGAGING IN THE RETAIL BUSINESS' WITHIN THE CONTEMPLATION OF REPUBLIC ACT NO. 1180. ACCORDINGLY, THE COURT OF APPEALS ERRED IN HOLDING THAT THE SALE OF A DIESEL GENERATING SET TO RESPONDENT WAS NULL AND VOID FOR HAVING BEEN MADE IN VIOLATION OF REPUBLIC ACT NO. 1180.

II. ASSUMING ARGUENDO THAT PETITIONER IS PROHIBITED BY LAW FROM ENGAGING IN DIRECT SELLING OF MACHINERY TO INDUSTRIAL USERS, THE CONTRACT OF SALE IN QUESTION IS NOT, BY THAT FACT ALONE, NULL AND VOID, AND THAT, ACCORDINGLY, PETITIONER IS ENTITLED TO RECOVER FROM RESPONDENT THE BALANCE OF THE PURCHASE PRICE OF THE SAID DIESEL GENERATING SET."[5]

We find merit in the petition.

The Court of Appeals held that petitioner violated the Retail Trade Nationalization Law and the Anti-Dummy Law[5a] in its decision. Its ruling was based upon the following assumptions:

- (1) The petitioner was illegally engaged in the retail business; and
- (2) The sale of a generating unit to respondent constituted retail business as defined by Republic Act No. 1180.

The said assumptions do not have any cogent basis in law. Section 4 of Republic Act No. 1180 defines retail business as follows:

"Sec. 4. As used in this Act, the term 'retail business' shall mean any act, occupation or calling of habitually

selling direct to the general public merchandise, commodities or good for consumption, but shall not include:

- (a) a manufacturer, processor, laborer or worker selling to the general public the products manufactured, processed, or produced by him if his capital does not exceed five thousand pesos.
- (b) a farmer or agriculturist selling the product of his farm.
- (c) a manufacturer or processor selling to industrial and commercial users or consumers who use the products bought by them to render service to the general public and/or to produce or manufacture goods which are in turn sold by them.
- (d) a hotel-owner or keeper operating a restaurant, irrespective of the amount of capital, provided that the restaurant is necessarily included in, or incidental to, the hotel business."*[6] (Italics supplied.)*

For a sale to be considered as retail, the following elements should concur:

- (1) The seller should be habitually engaged in selling;
- (2) The sale must be direct to the general public; and
- (3) The object of the sale is limited to merchandise, commodities or goods for consumption.

In this case, the first two elements are present. It is the presence of the third element that must be determined. The last element refers to the subject of the retailer's activities or what he is selling, i.e., consumption goods or consumer goods. Consumer goods may be defined as "goods which are used or bought for use primarily for personal, family or household purposes. Such goods are not intended for resale or further use in the production of other products^[7] In other words, consumer goods are goods which by their very nature are ready for consumption.

Producer goods have been defined as "goods (as tools and raw material) that are factors in the production of other goods and that satisfy wants only indirectly-called also auxiliary goods, instrumental goods, intermediate goods."^[8] They are by their very nature not sold to the public for consumption. As such, the sale of producer goods used for industry or business is classified as a wholesale transaction. Wholesaling has been defined as "selling to retailers or jobbers rather than to consumers or a sale in large quantity to one who intends to resell."^[9]

In the case at bar, the article in controversy is a piece of industrial machinery — a diesel generating unit. The said unit was purchased by respondent to be used in its coconut central and as such may be classified as "production or producer goods." Since the diesel generating unit is not a consumer item, it necessarily does not come within the ambit of retail business as defined by Republic Act No. 1180. Hence, herein petitioner Marsman & Company, Inc. may engage in the business of selling producer goods. It necessarily follows that petitioner cannot be guilty of violating the Anti-Dummy Law or of using a dummy since it is not prohibited by the Retail Trade Nationalization Law from selling the diesel generating unit to herein respondent. From the foregoing, there can be no basis in law for declaring the contract of sale as null and void.

That the sales to industrial or commercial users do not fall within the scope of the Retail Trade Nationalization Law is further confirmed by Presidential Decree No. 714 promulgated on May 28, 1975 amending said law when the latter provided in its preamble that "Whereas, it is believed to be not within the intendment of said nationalization law to include within its scope sales made to industrial or commercial users or consumers; x x x."

The finding, therefore, of the respondent court and of the lower court that the petitioner was guilty of violating the Anti-Dummy Law and the Retail Trade Nationalization Law is without lawful basis. By the same token its conclusion that the contract of sale with the respondent is void must be overturned. Petitioner's suit for the

recovery of the unpaid balance of the sale of the machinery to respondent must be upheld.

WHEREFORE, the instant petition is hereby GRANTED. The decision of the Court of Appeals is set aside. The decision of the trial Court in favor of the petitioner and against the respondent for the amount of P14,000.00, with interest at the rate of 12% per annum from September 25, 1967. and to pay attorney's fees in the amount of P2,000.00. and the costs of the suit, is hereby AFFIRMED. This decision is immediately executory and no motion for extension of time to file motion for reconsideration shall be entertained.

SO ORDERED.

Narvasa (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] CFI Decision, pages 21-22; pages 27 to 29, Rollo.

[2] Page 35, Rollo.

[3] Pages 37-38, Rollo.

[4] Pages 53-54, Rollo.

[5] Page 6, Rollo.

[5a] Commonwealth Act No. 108. as amended.

[6] As amended by P.D. 714, Section 1, promulgated May 28, 1975.

[7] Black's Law Dictionary, 5th ed.

[8] Webster's Third New International Dictionary.

[9] Black's Law Dictionary, 5th ed.

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