

CONSOLIDATED DAIRY PRODUCTS CO., JESUS B. BITO AND FEDERICO B. GUILAS, AS ACTING TRUSTEES OF CONSOLIDATED PHILIPPINES, INC. AND DAIRY EXPORT CO., INC., PETITIONERS, VS. THE COUR...

G.R. No. 100401. August 24, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals in CA-G.R. CV No. 01644 entitled “Consolidated Dairy Products Co., et al., versus The Court of Appeals and Standard Investment Corporation,” which affirmed in toto the decision of the then Court of First Instance (now Regional Trial Court) of Rizal (Pasay City).

The facts of the case as summarized by the trial court and adopted by the Court of Appeals are as follows:

“Sometime in 1956 Consolidated Dairy Products Company, Inc., a foreign corporation in Seattle, Washington, U.S.A. (hereinafter referred to as Consolidated Seattle), agreed with Santiago Syjuco, Inc. (hereinafter referred to as Syjuco, Inc.) to go into a joint venture to manufacture and sell Darigold milk and other dairy products in this country. To achieve this purpose, they organized and incorporated defendant Consolidated Philippines, Inc. (hereinafter referred to as Consolidated Philippines), with offices at Parañaque, Rizal. Consolidated Seattle owned 51% of the capital stock while the remaining 49% of the capital stock was owned by the Syjuco Inc. Thereafter, Consolidated Seattle extended to Consolidated Philippines the exclusive right to use the tradename Darigold in the Philippines. In turn, Consolidated Philippines began processing and distributing Darigold evaporated filled milk in the Philippines.

“At the start of its operation, Consolidated Philippines was importing its can requirements from the United States. However, due to economic policy then prevailing in the country, Consolidated Philippines was constrained to secure its can requirement from local sources. Hence, on April 2, 1959, Consolidated Philippines entered into a contract with plaintiff Standard Investment Corporation (hereinafter referred to as Standard), operating under the tradename Standard Can Company. Under the said can supply agreement, Consolidated Philippines agreed to purchase from the latter all its requirements of can up to May 31, 1969 (Exhibit C). Pursuant to this agreement, plaintiff constructed a can-making plant and purchased the required machineries and equipment and sent technicians to train in the United States under and for the account of Consolidated Philippines.

“In 1966, Dairy Export Company (hereinafter referred to as Dexco), a subsidiary of Consolidated Seattle and also holding office at 635 Elliot Avenue West, Seattle, Washington, U.S.A. with Consolidated Seattle, applied for a license to do business in the Philippines which was approved by the Securities and Exchange Commission. It held office in the very office of Consolidated Philippines. Thereafter, on September 30, 1966, Dexco entered into a contract with Consolidated Philippines whereby the latter agreed to purchase from the former packaged sweetened condensed filled milk.

“On May 6, 1968, plaintiff Standard, Consolidated Philippines, and Dexco signed a memorandum of agreement by virtue of which the tenure of the can supply agreement of April 2, 1959 between the plaintiff and Consolidated Philippines was extended up to December 31, 1981.

“On January 12, 1972, Consolidated Seattle thru Louis Arrigoni, notified Consolidated Philippines that the former was placing the control and licensing of the Darigold trademark in the Orient, including the Republic of the Philippines, into the hands of Dexco (Exhibit 8).

“On August 28, 1974, Consolidated Seattle, through its President, Dr. Louis Arrigoni, wrote Mr. Augusto Syjuco of Syjuco, Inc, a personal and confidential letter offering to sell to him the interest of Consolidated Seattle in Consolidated Philippines, alleging a great many economies could be made by a single management and production organization running the three organizations, the Standard, Consolidated Philippines and Dexco, as the set up then existing will ultimately result in the demise of Consolidated Philippines (Exhibit O). This was refused by Mr. Augusto Syjuco.

“On November 13, 1974, Dexco wrote Consolidated Philippines that it was cancelling effective January 25, 1975 the license granted to Consolidated Philippines to use the tradename Darigold (Exhibit P).

“Mr. Augusto Syjuco, in his behalf and in behalf of Syjuco, Inc., the minority stockholder in Consolidated Philippines, protested the cancellation of the license. (Exhibit Q).

“Subsequently, Dr. Louis Arrigoni, speaking as President of Consolidated Seattle, offered Syjuco, Inc. to sell (sic) Consolidated Seattle’s share in Consolidated Philippines for P1.00 or to buy Syjuco, Inc.’s share in Consolidated Philippines or to file bankruptcy proceedings for Consolidated Philippines.

“Left with no better choice, Syjuco, Inc. chose to sell its 49% equity in Consolidated Philippines to Consolidated Seattle. Consequently, on October 8, 1976, Syjuco, Inc. executed a memorandum agreement by virtue of which it agreed to sell to Consolidated Seattle all its interest in Consolidated Philippines and to dissolve Consolidated Philippines, subject to the condition that the right of plaintiff to submit claims it may have shall be respected in case Consolidated Philippines is not dissolved (Exhibit E).

“Accordingly, Consolidated Seattle bought the entire interest of Syjuco, Inc. and its stockholdings Consolidated Philippines and proceeded to dissolve Consolidated Philippines (TSN, October 22, 1979, p. 20).

“Before Consolidated Philippines could be dissolved, however, Dexco the wholly owned subsidiary of Consolidated Seattle took over the marketing activities of Consolidated Philippines (Exhibits A and A-1) and proceeded to sell milk under the tradename Darigold upon the dissolution of Consolidated Philippines (TSN, October 22, 1979, pp. 31 and 105; Exhibits AA, AA-1, AA-2, AA-4, BB, BB-1 and BB-3).

“Earlier, however, on November 3, 1976, E.L. Benitez, then general manager of Consolidated Philippines, notified plaintiff that it was cancelling the can supply contract of April 2, 1959 (Exhibit B), prompting plaintiff to demand reimbursement for the separation pay of the employees concerned due to the cessation of their operation on November 15, 1976 in the amount of P1,022,472.59 and payment of unrealized profits (Exhibits H, I and N).

“Since plaintiff’s demands were rejected (Exhibit 11), it was constrained to file this case and to engage the services of counsel for 25% of all recoveries (Exhibit X).

“After summons have been validly served on the defendants, defendant Dexco in its answer claims that plaintiff Standard had no cause of action against it considering that the basis for its instant action was the can supply contract between the said plaintiff and Consolidated Philippines wherein Dexco was not a party and therefore no(t) privy (to the) contract existing between them, and that assuming that it was bound by the can supply contract and liable to the plaintiff, this action was premature as no demand relative thereto was made.

“Defendant Consolidated Philippines, through its trustees, defendant Jesus Bito and Federico Guilas, claims

that the plaintiff's action was premature as the same never referred to an impartial referee which was provided for by can supply agreement, that the dissolution and liquidation of Consolidated Philippines was mutually agreed upon by the Consolidated Seattle and Syjuco, Inc., and that the dissolution and liquidation of Consolidated Philippines extinguished its obligation under the can supply contract, and finally that the guarantee extended by Consolidated Seattle for Consolidated Philippines' liability under the can supply contract covered only liabilities for cans already supplied and not liabilities accruing subsequent to the execution of the memorandum agreement of October 8. In both answers Consolidated Philippines as well as Dexco filed Counterclaims which were denied by the plaintiff.

"Defendant Consolidated Seattle did not file any answer. (pp. 1-4, Decision; p. 14, Record)" (pp. 53-56, Rollo)

After the parties presented their respective evidence, the trial court rendered judgment in favor of Standard. The dispositive portion of which reads:

"IN VIEW OF THE FOREGOING, this Court hereby orders the defendants, namely, Consolidated Dairy Products Company of Seattle, Washington, U.S.A. and/or its alter ego Dairy Export Company Inc., as well as Consolidated Philippines, Inc. (represented by its Acting Trustees Jesus B. Bito and Federico B. Guilas) to pay plaintiff, jointly and severally, the following:

a) P1,022,472.59 representing the separation pay that plaintiff had to pay its employees plus 6% interest per annum computed from the date of the filing of this case on April 4, 1977 until the defendants fully pay their obligation;

b) P8,107,931.13 representing plaintiff's aggregate unrealized profit from the years 1974 to 1981 plus 6% interest per annum computed from April 4, 1977, the date of the filing of this case until defendants fully pay their obligation;

c) P1,150,197.80 representing inventory losses suffered by plaintiff plus 6% interest per annum computed from April 4, 1977 until defendants fully settle their obligation; and

d) P1,000,000.00 as exemplary damages, considering the damages caused the plaintiff and the fraudulent scheme used by the defendants, plus 25% of all the abovementioned amounts as attorney's fees.

"The counterclaim of the defendants Consolidated Philippines and Dexco are denied for lack of merit. (pp. 9-10, Decision; pp. 564-565, Record)"

Not satisfied with the decision of the trial court, Consolidated Seattle and Consolidated Philippines, thru its acting trustees, appealed to the Court of Appeals. On April 19, 1991, the Court of Appeals rendered a decision affirming the decision of the trial court in toto.

In this petition for review, Consolidated Seattle and Consolidated Philippines pray for the reversal of the decision of the Court of Appeals and the dismissal of the complaint of Standard. The following assignment of errors were raised:

"FIRST ASSIGNMENT OF ERROR

"THE LOWER COURT ERRED IN NOT DISMISSING THE AMENDED COMPLAINT FOR FAILURE TO STATE A CAUSE OF ACTION AGAINST DEFENDANT DAIRY EXPORT COMPANY INC. (DEXCO).

"SECOND ASSIGNMENT OF ERROR

"THE LOWER COURT ERRED IN NOT RULING THAT PLAINTIFF HAD KNOWLEDGE OF AND APPROVED, OR AT LEAST, AGREED TO, THE DISSOLUTION OF CONSOLIDATED PHILIPPINES INC. (CPI) WHICH WOULD NECESSARILY HAVE THE EFFECT OF TERMINATING THE CAN

SUPPLY CONTRACT (EXHIBIT 'C') AND EXTINGUISHING CPI'S OBLIGATIONS UNDER SAID CONTRACT.

"THIRD ASSIGNMENT OF ERROR

"THE LOWER COURT ERRED IN NOT RULING THAT PLAINTIFF'S ACTION IS PREMATURE FOR FAILURE OF PLAINTIFF TO FIRST REFER ITS CLAIM TO AN IMPARTIAL REFEREE AS CALLED FOR UNDER THE CAN SUPPLY CONTRACT.

"FOURTH ASSIGNMENT OF ERROR

"THE LOWER COURT ERRED IN SUSTAINING PLAINTIFF'S CLAIM FOR UNREALIZED PROFITS.

"FIFTH ASSIGNMENT OF ERROR

"THE LOWER COURT ERRED IN AWARDING PLAINTIFF INVENTORY LOSSES IN THE SUM OF P1,150,197.00

"SIXTH ASSIGNMENT OF ERROR

"THE LOWER COURT ERRED IN AWARDING EXEMPLARY DAMAGES AND ATTORNEY'S FEES IN FAVOR OF PLAINTIFF." (pp. 15-16, Rollo)

It is a settled rule that only questions of law may be raised in a petition for certiorari under Rule 45 of the Rules of Court. Findings of fact of the Court of Appeals are final and binding upon this Court unless it is shown that they are grounded entirely on speculations, surmises or conjectures. In this case, We have carefully reviewed the records and found that the findings of facts of both the court a quo and the appellate court are supported by evidence.

In its first assigned error, petitioner faulted respondent appellate court in affirming the decision of the trial court denying Dexco's motion to dismiss amended complaint filed by respondent-plaintiff Standard on the ground that in the amended complaint Standard impleaded as additional defendant herein petitioner Dexco but said amended complaint did not state any cause of action against the latter.

The pertinent allegations in the amended complaint which tended to show Dexco's participation in the transactions subject of this case states:

"15. That subsequent to the arbitrary termination of the Can Supply Contract by CPI*, defendant Dexco took over the business of CPI with E.L. Benitez, the Manager of CPI being appointed by Dr. Loius Arrigoni, the President of defendant CDPC and defendant DEXCO in the United States of America, as the new General Manager of the Dexco branch in the Philippines;

"16. That the dissolution of CPI which prejudiced plaintiff Standard was caused by defendant CDPC in order for its Dexco branch in the Philippines to be able to take over the business of CPI;

"17. That the act of defendants CDPC and Dexco mentioned above, constituted a breach of contract with plaintiff, in bad faith;

"18. That defendant Dexco is not only a subsidiary of defendant CDPC, but also an alter ego of the latter, defendant CDPC making use of defendant Dexco as a vehicle for the evasion of its obligation under the 'Can Supply Contract' and Memorandum Agreement (Annexes 'A' and 'B' hereof);

"19. That, therefore, defendant Dexco and defendant CDPC being one and the same juridical person, the liability of defendant CDPC to plaintiff for evading its obligation is, likewise, the liability of defendant Dexco; x x x." (p. 20, Rollo).

A cause of action is the fact or combination of facts which affords a party a right to judicial interference in his behalf. The cause of action must always consist of two (2) elements: (1) the plaintiff's primary right and the defendant's corresponding primary duty, whatever may be the subject to which they relate -- person, character, property or contract; and (2) the delict or wrongful act or omission of the defendant, by which the primary right and duty have been violated (*De Guzman, Jr., v. CA*, G.R. No. 92029-30, 20 December 1990). The allegations in the amended complaint were sufficient to make out a case against Dexco. It alleged that Dexco took over the business of Consolidated Philippines and that both corporations are actually one and the same, the former being the alter ego of the latter and that Dexco was used as a vehicle for the evasion by Consolidated Seattle (the mother company of Consolidated Philippines in Seattle) of its liabilities to Standard. Indeed, if these allegations are proven, Dexco can be held liable to Standard by applying the doctrine of piercing the veil of corporate entity. The applicable law to the set of facts stated in the complaint need not be set out directly. In this case, it is sufficient that Standard claimed it had a right against Consolidated Philippines by virtue of the can supply contract it executed with them and that the termination of Consolidated Philippines was only a ploy to escape from its liabilities in favor of Standard because in truth, Consolidated Philippines continued to do its business thru Dexco, which is an alter ego of the former. The test of sufficiency of the facts alleged is whether or not the Court could render a valid judgment as prayed for, accepting as true the exclusive facts set forth in the complaint (*Sumalinog v. Doronio*, G.R. No. 42281, 6 April 1990).

The petitioners further argue that Dexco cannot be held liable because it was not privy to the can supply contract between Standard and Consolidated Philippines. It is true that in the agreement whereby Standard undertook to supply cans to Consolidated Philippines, Dexco was not a party. The said agreement dated April 2, 1959 was for Standard to supply and Consolidated Philippines to buy. It should be noted that before the expiration of the first can supply contract in 1969 Dexco, another subsidiary of Consolidated Seattle, was already organized and was licensed to do business in the Philippines in 1966. Thus, on May 6, 1968, the said can supply agreement was extended to December 31, 1981 and Dexco was a party to this extension. Dexco, in this extension agreement was in fact an active party. As held by respondent appellate court:

"It is argued that the can supply contract dated April 2, 1959 was executed by Standard Investment Corporation and Consolidated Philippines only and therefore Dexco should not be bound by the contents thereof, much less obligated to answer for the undertakings thereunder by reason of the rule on privity of contracts. Verily, Dexco nonchalantly admitted that it signed the subsequent agreement on May 6, 1968 with plaintiff-appellee (Standard) and Consolidated Philippines (Exhibit 'D') but its participation therein was limited only to the contract dated September 30, 1966 between Consolidated Philippines and Dexco referred to in paragraph 2 of Exhibit 'D-1'. Pursuing this chain of arguments, if, indeed, Dexco was never privy to the transaction dated April 2, 1959, it is a wonder then for Dexco to have signed and approved the extension of that contract in the Memorandum of Agreement dated May 6, 1968 which principally stipulated:

"1. That certain Agreement dated April 2, 1959 between the above-named STANIN and the above-named CPI, relating to the supply of cans by STANIN to CPI (a copy of which agreement is attached hereto as Exhibit 'A' and by this reference incorporated herein) is hereby extended for a period commencing on its present expiration date and ending on December 31, 1981, upon the terms and conditions set forth in the said agreement dated April 2, 1959 (Exhibit D-1)." (p. 63, Rollo)

The petitioners also alleged that Standard should be estopped from demanding any claim from them because Standard and Syjuco, Inc. had identical officers. Since the officers of Syjuco, Inc. voted for the dissolution of Consolidated Philippines and acceded to the dissolution of Standard, they cannot now complain and ask for damages in favor of Standard against the petitioners. It is allegedly proper that the veil of corporate fiction of Standard and Syjuco, Inc. should be pierced and considering that SSI had knowledge of the dissolution and in fact

accepted the dissolution of CPI, Standard is therefore bound by the dissolution.

The records revealed that Syjuco, Inc. which originally owned 49% of the shares of stock of Consolidated Philippines (with Consolidated Seattle owning 51%) was left with no choice but to sell its shares in Consolidated Philippines to Consolidated Seattle. Consolidated Philippines however, cannot continue its existence because Consolidated Seattle cancelled the license granted to it to use the tradename Darigold. With the cancellation of the license Consolidated Philippines had no more reason to continue its existence. Moreover, while Syjuco, Inc. agreed to the subsequent dissolution of CPI, it signed the agreement (Exhibit E) because of the condition that Consolidated Seattle in Washington will guarantee the full payment of Consolidated Philippines' liabilities to Standard in the can supply contract [Par. 6(d)) of the Memorandum of Agreement].

The appellate court allegedly erred when it ruled that the clause on Section 6(d) of the Memorandum of Agreement (p. 5, Exhibit "E") which provided:

"(d) It guarantees the full payment under the terms of the Can Supply Contract between CPI and Standard Can Company, of CPI's liability to Standard Can Company for cans already supplied by Standard Can Company. This however does not preclude Standard Can Company from submitting directly to CPI other claims that it may have under the Can Supply Contract."

was enough safeguard for the preservation of Standard's claims without elaborating on the reason why it held so. It is the opinion of the petitioners that the above clause referred only to claims already due and owing as of the effective date of Consolidated Philippines' dissolution, but does not refer to claims for reimbursement of separation pay and for loss of expected profits for the unexpired portion of the can supply contract.

While the first paragraph of the said clause had specific reference to Consolidated Philippines' liability to Standard for cans already supplied, the second part of the clause covers all other claims which Standard may have against Consolidated Philippines. The terms of the agreement are clear and need no explanation or interpretation. None could suit petitioner's contention legally.

We agree with respondent appellate court that petitioners had no right to invoke the defense that the claim must first be referred to an impartial referee as provided for in the can supply agreement because there was an outright rejection by the petitioners of private respondent's claim. The records showed that two (2) letters dated November 7 and 18, 1976 were sent by private respondent demanding the payment of separation pay to its employees but petitioners, through the law offices of Salcedo, del Rosario, Bito, Misa and Lozada, denied the claim outright (p. 473, Records. Exh. 11) because these claims were allegedly outside of the cost of the purchased and delivered cans as agreed upon in the contract.

We now go to the propriety of the award of damages. The trial court received evidence to support private respondent's claim for damages. It should be emphasized here that the damages claimed by private respondents do not refer to claims which were already due from the can supply contract. The claims here are for damages caused by the fraudulent termination by petitioners of the can supply contract four (4) years before the end of its term and for such a short notice. We reproduce herein the findings of the trial court and adopt them with modifications as regards the amount:

"Plaintiff's first claim is for reimbursement for the separation pay it paid its employees due to the termination of the can supply agreement in the amount of P1,022,472.59.

"The evidence supports plaintiff's claim above (sub-par. A and C, par. 111 of Exhibit C and Exhibit J-1). The amount actually paid by plaintiffs to the separated employee is P929,520.54 (Exhibits L and R to R-54). To this was added 10% since 10% must be added to costs of production, thus making the total of P1,022,472.59 (Exhibit C and I)." (p. 521, Record)

There is no question that Standard paid these amounts to their separated employees. It was obliged to do so by virtue of the CBA it signed with the employees.

“The second claim of plaintiff is for unrealized profit amounting to P8,107,931.13. In support of this claim plaintiff showed that from 1971 to 1975 it made an aggregate profit of P8,107,931.13 (Exhibits M, U, U-2, U-4, U-6, U-8, U-10, U-12, U-14, U-16 and U-18), and argued that since the can supply contract had another five (5) years to go (1977 to 1981) plaintiff would have earned that much.”

(Ibid.)

Indemnification for damages shall comprehend not only the value of the loss suffered, but also that of the profits which the obligee failed to obtain (Art. 2200 NCC). The presumption that Standard would earn exactly the same profit as it did five (5) years before its closure is speculative. A more reasonable amount would be the average of the yearly profit for the five years preceeding the closure (1971-1975) multiplied by the number of years remaining as provided for in the contract. The average yearly profit for 1971 to 1975 is P1,041,095.76 (p. 280, Records). This amount multiplied by five (years) amounts to P5,205,478.80.

We also affirm the findings of the appellate court on inventory losses as it is sufficiently supported by evidence, to wit:

“The financial statement of plaintiff further shows that it incurred inventory losses in the year 1977 (Exhibit V), due to cans which rusted and could not have been disposed of (TSN, November 27, 1979, p. 13), administrative expenses connected with the cost of the cans, cost of raw materials and depreciated portion of the machinery all amounting to P1,150,197.80 (TSN, November 26, 1979, Exhibit V). These losses were due to the cancellation of the can supply contract before its agreed expiration date. It is only right that defendants be held liable for them.” (p. 64, Rollo)

There is no doubt that the breach committed by the petitioners was made in a wanton and fraudulent manner. There was no reason for petitioners to terminate the can supply contract with Standard. The latter was purposely organized for the benefit of Consolidated Philippines. Neither was there a need to close Consolidated Philippines because Consolidated Seattle had all the intentions of continuing its business only this time to be undertaken by its sole subsidiary, Dexco to the prejudice of Standard. Where a defendant violates a contract with plaintiff, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive and malevolent manner (Art. 2232, Civil Code).

The claim for attorney’s fees of 25% percent of all recoveries is unconscionable. It is hereby reduced to 15%.

ACCORDINGLY, the decision of respondent Court of Appeals is affirmed with modification on the amount of damages awarded as discussed above.

SO ORDERED.

Cruz, (Chairman), Grino-Aquino, and Bellosillo, JJ., concur.

* Consolidated Philippines, Inc.

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