

VICTORIAS MILLING CO., INC., PETITIONER, VS. COURT OF APPEALS AND CONSOLIDATED SUGAR CORPORATION, RESPONDENTS.*G.R. No. 117356. June 19, 2000*

Ponente: QUISUMBING, J.

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Before us is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the decision of the Court of Appeals dated February 24, 1994, in CA-G.R. CV No. 31717, as well as the respondent court's resolution of September 30, 1994 modifying said decision. Both decision and resolution amended the judgment dated February 13, 1991, of the Regional Trial Court of Makati City, Branch 147, in Civil Case No. 90-118.

The facts of this case as found by both the trial and appellate courts are as follows:

St. Therese Merchandising (hereafter STM) regularly bought sugar from petitioner Victorias Milling Co., Inc., (VMC). In the course of their dealings, petitioner issued several Shipping List/Delivery Receipts (SLDRs) to STM as proof of purchases. Among these was SLDR No. 1214M, which gave rise to the instant case. Dated October 16, 1989, SLDR No. 1214M covers 25,000 bags of sugar. Each bag contained 50 kilograms and priced at P638.00 per bag as "per sales order VMC Marketing No. 042 dated October 16, 1989." [1] The transaction it covered was a "direct sale." [2] The SLDR also contains an additional note which reads: "subject for (sic) availability of a (sic) stock at NAWACO (warehouse)." [3]

On October 25, 1989, STM sold to private respondent Consolidated Sugar Corporation (CSC) its rights in SLDR No. 1214M for P 14,750,000.00. CSC issued one check dated October 25, 1989 and three checks postdated November 13, 1989 in payment. That same day, CSC wrote petitioner that it had been authorized by STM to withdraw the sugar covered by SLDR No. 1214M. Enclosed in the letter were a copy of SLDR No. 1214M and a letter of authority from STM authorizing CSC "to withdraw for and in our behalf the refined sugar covered by Shipping List/Delivery Receipt-Refined Sugar (SDR) No. 1214 dated October 16, 1989 in the total quantity of 25,000 bags." [4]

On October 27, 1989, STM issued 16 checks in the total amount of P31,900,000.00 with petitioner as payee. The latter, in turn, issued Official Receipt No. 33743 dated October 27, 1989 acknowledging receipt of the said checks in payment of 50,000 bags. Aside from SLDR No. 1214M, said checks also covered SLDR No. 1213.

Private respondent CSC surrendered SLDR No. 1214M to the petitioner's NAWACO warehouse and was allowed to withdraw sugar. However, after 2,000 bags had been released, petitioner refused to allow further withdrawals of sugar against SLDR No. 1214M. CSC then sent petitioner a letter dated January 23, 1990 informing it that SLDR No. 1214M had been "sold and endorsed" to it but that it had been refused further withdrawals of sugar from petitioner's warehouse despite the fact that only 2,000 bags had been withdrawn. [5] CSC thus inquired when it would be allowed to withdraw the remaining 23,000 bags.

On January 31, 1990, petitioner replied that it could not allow any further withdrawals of sugar against SLDR No.

1214M because STM had already withdrawn all the sugar covered by the cleared checks.[6]

On March 2, 1990, CSC sent petitioner a letter demanding the release of the balance of 23,000 bags.

Seven days later, petitioner reiterated that all the sugar corresponding to the amount of STM's cleared checks had been fully withdrawn and hence, there would be no more deliveries of the commodity to STM's account. Petitioner also noted that CSC had represented itself to be STM's agent as it had withdrawn the 2,000 bags against SLDR No. 1214M "for and in behalf" of STM.

On April 27, 1990, CSC filed a complaint for specific performance, docketed as Civil Case No. 90-1118. Defendants were Teresita Ng Sy (doing business under the name of St. Therese Merchandising) and herein petitioner. Since the former could not be served with summons, the case proceeded only against the latter. During the trial, it was discovered that Teresita Ng Go who testified for CSC was the same Teresita Ng Sy who could not be reached through summons.[7] CSC, however, did not bother to pursue its case against her, but instead used her as its witness.

CSC's complaint alleged that STM had fully paid petitioner for the sugar covered by SLDR No. 1214M. Therefore, the latter had no justification for refusing delivery of the sugar. CSC prayed that petitioner be ordered to deliver the 23,000 bags covered by SLDR No. 1214M and sought the award of P1,104,000.00 in unrealized profits, P3,000,000.00 as exemplary damages, P2,200,000.00 as attorney's fees and litigation expenses.

Petitioner's primary defense a quo was that it was an unpaid seller for the 23,000 bags.[8] Since STM had already drawn in full all the sugar corresponding to the amount of its cleared checks, it could no longer authorize further delivery of sugar to CSC. Petitioner also contended that it had no privity of contract with CSC.

Petitioner explained that the SLDRs, which it had issued, were not documents of title, but mere delivery receipts issued pursuant to a series of transactions entered into between it and STM. The SLDRs prescribed delivery of the sugar to the party specified therein and did not authorize the transfer of said party's rights and interests.

Petitioner also alleged that CSC did not pay for the SLDR and was actually STM's co-conspirator to defraud it through a misrepresentation that CSC was an innocent purchaser for value and in good faith. Petitioner then prayed that CSC be ordered to pay it the following sums: P10,000,000.00 as moral damages; P10,000,000.00 as exemplary damages; and P1,500,000.00 as attorney's fees. Petitioner also prayed that cross-defendant STM be ordered to pay it P10,000,000.00 in exemplary damages, and P1,500,000.00 as attorney's fees.

Since no settlement was reached at pre-trial, the trial court heard the case on the merits.

As earlier stated, the trial court rendered its judgment favoring private respondent CSC, as follows:

"WHEREFORE, in view of the foregoing, the Court hereby renders judgment in favor of the plaintiff and against defendant Victorias Milling Company:

"1) Ordering defendant Victorias Milling Company to deliver to the plaintiff 23,000 bags of refined sugar due under SLDR No. 1214;

"2) Ordering defendant Victorias Milling Company to pay the amount of P920,000.00 as unrealized profits, the amount of P800,000.00 as exemplary damages and the amount of P1,357,000.00, which is 10% of the acquisition value of the undelivered bags of refined sugar in the amount of P13,570,000.00, as attorney's fees, plus the costs.

"SO ORDERED."[9]

It made the following observations:

"[T]he testimony of plaintiff's witness Teresita Ng Go, that she had fully paid the purchase price of P15,950,000.00 of the 25,000 bags of sugar bought by her covered by SLDR No. 1214 as well as the purchase price of P15,950,000.00 for the 25,000 bags of sugar bought by her covered by SLDR No. 1213 on the same date, October 16, 1989 (date of the two SLDRs) is duly supported by Exhibits C to C-15 inclusive which are post-dated checks dated October 27, 1989 issued by St. Therese Merchandising in favor of Victorias Milling Company at the time it purchased the 50,000 bags of sugar covered by SLDR No. 1213 and 1214. Said checks appear to have been honored and duly credited to the account of Victorias Milling Company because on October 27, 1989 Victorias Milling Company issued official receipt no. 34734 in favor of St. Therese Merchandising for the amount of P31,900,000.00 (Exhibits B and B-1). The testimony of Teresita Ng Go is further supported by Exhibit F, which is a computer printout of defendant Victorias Milling Company showing the quantity and value of the purchases made by St. Therese Merchandising, the SLDR no. issued to cover the purchase, the official receipt no. and the status of payment. It is clear in Exhibit 'F' that with respect to the sugar covered by SLDR No. 1214 the same has been fully paid as indicated by the word 'cleared' appearing under the column of 'status of payment.'

"On the other hand, the claim of defendant Victorias Milling Company that the purchase price of the 25,000 bags of sugar purchased by St. Therese Merchandising covered by SLDR No. 1214 has not been fully paid is supported only by the testimony of Arnulfo Caintic, witness for defendant Victorias Milling Company. The Court notes that the testimony of Arnulfo Caintic is merely a sweeping barren assertion that the purchase price has not been fully paid and is not corroborated by any positive evidence. There is an insinuation by Arnulfo Caintic in his testimony that the postdated checks issued by the buyer in payment of the purchased price were dishonored. However, said witness failed to present in Court any dishonored check or any replacement check. Said witness likewise failed to present any bank record showing that the checks issued by the buyer, Teresita Ng Go, in payment of the purchase price of the sugar covered by SLDR No. 1214 were dishonored." [10]

Petitioner appealed the trial court's decision to the Court of Appeals.

On appeal, petitioner averred that the dealings between it and STM were part of a series of transactions involving only one account or one general contract of sale. Pursuant to this contract, STM or any of its authorized agents could withdraw bags of sugar only against cleared checks of STM. SLDR No. 21214M was only one of 22 SLDRs issued to STM and since the latter had already withdrawn its full quota of sugar under the said SLDR, CSC was already precluded from seeking delivery of the 23,000 bags of sugar.

Private respondent CSC countered that the sugar purchases involving SLDR No. 1214M were separate and independent transactions and that the details of the series of purchases were contained in a single statement with a consolidated summary of cleared check payments and sugar stock withdrawals because this a more convenient system than issuing separate statements for each purchase.

The appellate court considered the following issues: (a) Whether or not the transaction between petitioner and STM involving SLDR No. 1214M was a separate, independent, and single transaction; (b) Whether or not CSC had the capacity to sue on its own on SLDR No. 1214M; and (c) Whether or not CSC as buyer from STM of the rights to 25,000 bags of sugar covered by SLDR No. 1214M could compel petitioner to deliver 23,000 bags allegedly unwithdrawn.

On February 24, 1994, the Court of Appeals rendered its decision modifying the trial court's judgment, to wit:

"WHEREFORE, the Court hereby MODIFIES the assailed judgment and orders defendant-appellant to:

"1) Deliver to plaintiff-appellee 12,586 bags of sugar covered by SLDR No. 1214M;

" 2) Pay to plaintiff-appellee P792,918.00 which is 10% of the value of the undelivered bags of refined sugar, as attorneys fees;

"3) Pay the costs of suit.

"SO ORDERED." [11]

Both parties then seasonably filed separate motions for reconsideration.

In its resolution dated September 30, 1994, the appellate court modified its decision to read:

"WHEREFORE, the Court hereby modifies the assailed judgment and orders defendant-appellant to:

"(1) Deliver to plaintiff-appellee 23,000 bags of refined sugar under SLDR No. 1214M;

"(2) Pay costs of suit.

"SO ORDERED." [12]

The appellate court explained the rationale for the modification as follows:

"There is merit in plaintiff-appellee's position.

"Exhibit `F' We relied upon in fixing the number of bags of sugar which remained undelivered as 12,586 cannot be made the basis for such a finding. The rule is explicit that courts should consider the evidence only for the purpose for which it was offered. (People v. Abalos, et al, 1 CA Rep 783). The rationale for this is to afford the party against whom the evidence is presented to object thereto if he deems it necessary. Plaintiff-appellee is, therefore, correct in its argument that Exhibit `F' which was offered to prove that checks in the total amount of P15,950,000.00 had been cleared. (Formal Offer of Evidence for Plaintiff, Records p. 58) cannot be used to prove the proposition that 12,586 bags of sugar remained undelivered.

"Testimonial evidence (Testimonies of Teresita Ng [TSN, 10 October 1990, p. 33] and Marianito L. Santos [TSN, 17 October 1990, pp. 16, 18, and 36]) presented by plaintiff-appellee was to the effect that it had withdrawn only 2,000 bags of sugar from SLDR after which it was not allowed to withdraw anymore. Documentary evidence (Exhibit I, Id., p. 78, Exhibit K, Id., p. 80) show that plaintiff-appellee had sent demand letters to defendant-appellant asking the latter to allow it to withdraw the remaining 23,000 bags of sugar from SLDR 1214M. Defendant-appellant, on the other hand, alleged that sugar delivery to the STM corresponded only to the value of cleared checks; and that all sugar corresponded to cleared checks had been withdrawn. Defendant-appellant did not rebut plaintiff-appellee's assertions. It did not present evidence to show how many bags of sugar had been withdrawn against SLDR No. 1214M, precisely because of its theory that all sales in question were a series of one single transaction and withdrawal of sugar depended on the clearing of checks paid therefor.

"After a second look at the evidence, We see no reason to overturn the findings of the trial court on this point." [13]

Hence, the instant petition, positing the following errors as grounds for review:

"1. The Court of Appeals erred in not holding that STM's and private respondent's specially informing petitioner that respondent was authorized by buyer STM to withdraw sugar against SLDR No. 1214M "for and in our (STM) behalf," (emphasis in the original) private respondent's withdrawing 2,000 bags of sugar for STM, and STM's empowering other persons as its agents to withdraw sugar against the same SLDR No. 1214M, rendered respondent like the other persons, an agent of STM as held in *Rallos v. Felix Go Chan & Realty Corp.*, 81 SCRA 252, and precluded it from subsequently claiming and proving being an assignee of SLDR No. 1214M and from suing by itself for its enforcement because it was conclusively presumed to be an agent (Sec. 2, Rule 131, Rules of Court) and estopped from doing so. (Art. 1431, Civil Code).

" 2. The Court of Appeals erred in manifestly and arbitrarily ignoring and disregarding certain relevant and undisputed facts which, had they been considered, would have shown that petitioner was not liable, except for

69 bags of sugar, and which would justify review of its conclusion of facts by this Honorable Court.

" 3. The Court of Appeals misapplied the law on compensation under Arts. 1279, 1285 and 1626 of the Civil Code when it ruled that compensation applied only to credits from one SLDR or contract and not to those from two or more distinct contracts between the same parties; and erred in denying petitioner's right to setoff all its credits arising prior to notice of assignment from other sales or SLDRs against private respondent's claim as assignee under SLDR No. 1214M, so as to extinguish or reduce its liability to 69 bags, because the law on compensation applies precisely to two or more distinct contracts between the same parties (emphasis in the original).

"4. The Court of Appeals erred in concluding that the settlement or liquidation of accounts in Exh. `F' between petitioner and STM, respondent's admission of its balance, and STM's acquiescence thereto by silence for almost one year did not render Exh. `F' an account stated and its balance binding.

"5. The Court of Appeals erred in not holding that the conditions of the assigned SLDR No. 1214, namely, (a) its subject matter being generic, and (b) the sale of sugar being subject to its availability at the Nawaco warehouse, made the sale conditional and prevented STM or private respondent from acquiring title to the sugar; and the non-availability of sugar freed petitioner from further obligation.

"6. The Court of Appeals erred in not holding that the "clean hands" doctrine precluded respondent from seeking judicial reliefs (sic) from petitioner, its only remedy being against its assignor." [14]

Simply stated, the issues now to be resolved are:

(1) Whether or not the Court of Appeals erred in not ruling that CSC was an agent of STM and hence, estopped to sue upon SLDR No. 1214M as an assignee.

(2) Whether or not the Court of Appeals erred in applying the law on compensation to the transaction under SLDR No. 1214M so as to preclude petitioner from offsetting its credits on the other SLDRs.

(3) Whether or not the Court of Appeals erred in not ruling that the sale of sugar under SLDR No. 1214M was a conditional sale or a contract to sell and hence freed petitioner from further obligations.

(4) Whether or not the Court of Appeals committed an error of law in not applying the "clean hands doctrine" to preclude CSC from seeking judicial relief.

The issues will be discussed in seriatim.

Anent the first issue, we find from the records that petitioner raised this issue for the first time on appeal. It is settled that an issue which was not raised during the trial in the court below could not be raised for the first time on appeal as to do so would be offensive to the basic rules of fair play, justice, and due process.[15] Nonetheless, the Court of Appeals opted to address this issue, hence, now a matter for our consideration.

Petitioner heavily relies upon STM's letter of authority allowing CSC to withdraw sugar against SLDR No. 1214M to show that the latter was STM's agent. The pertinent portion of said letter reads:

"This is to authorize Consolidated Sugar Corporation or its representative to withdraw for and in our behalf (stress supplied) the refined sugar covered by Shipping List/Delivery Receipt = Refined Sugar (SDR) No. 1214 dated October 16, 1989 in the total quantity of 25, 000 bags." [16]

The Civil Code defines a contract of agency as follows:

"Art. 1868. By the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter."

It is clear from Article 1868 that the basis of agency is representation.[17] On the part of the principal, there must

be an actual intention to appoint[18] or an intention naturally inferable from his words or actions;[19] and on the part of the agent, there must be an intention to accept the appointment and act on it,[20] and in the absence of such intent, there is generally no agency.[21] One factor which most clearly distinguishes agency from other legal concepts is control; one person - the agent - agrees to act under the control or direction of another - the principal. Indeed, the very word "agency" has come to connote control by the principal.[22] The control factor, more than any other, has caused the courts to put contracts between principal and agent in a separate category.[23] The Court of Appeals, in finding that CSC, was not an agent of STM, opined:

"This Court has ruled that where the relation of agency is dependent upon the acts of the parties, the law makes no presumption of agency, and it is always a fact to be proved, with the burden of proof resting upon the persons alleging the agency, to show not only the fact of its existence, but also its nature and extent (Antonio vs. Enriquez [CA], 51 O.G. 3536). Here, defendant-appellant failed to sufficiently establish the existence of an agency relation between plaintiff-appellee and STM. The fact alone that it (STM) had authorized withdrawal of sugar by plaintiff-appellee "for and in our (STM's) behalf" should not be eyed as pointing to the existence of an agency relation ...It should be viewed in the context of all the circumstances obtaining. Although it would seem STM represented plaintiff-appellee as being its agent by the use of the phrase "for and in our (STM's) behalf" the matter was cleared when on 23 January 1990, plaintiff-appellee informed defendant-appellant that SLDR No. 1214M had been "sold and endorsed" to it by STM (Exhibit I, Records, p. 78). Further, plaintiff-appellee has shown that the 25, 000 bags of sugar covered by the SLDR No. 1214M were sold and transferred by STM to it ...A conclusion that there was a valid sale and transfer to plaintiff-appellee may, therefore, be made thus capacitating plaintiff-appellee to sue in its own name, without need of joining its imputed principal STM as co-plaintiff." [24]

In the instant case, it appears plain to us that private respondent CSC was a buyer of the SLDR form, and not an agent of STM. Private respondent CSC was not subject to STM's control. The question of whether a contract is one of sale or agency depends on the intention of the parties as gathered from the whole scope and effect of the language employed.[25] That the authorization given to CSC contained the phrase "for and in our (STM's) behalf" did not establish an agency. Ultimately, what is decisive is the intention of the parties.[26] That no agency was meant to be established by the CSC and STM is clearly shown by CSC's communication to petitioner that SLDR No. 1214M had been "sold and endorsed" to it.[27] The use of the words "sold and endorsed" means that STM and CSC intended a contract of sale, and not an agency. Hence, on this score, no error was committed by the respondent appellate court when it held that CSC was not STM's agent and could independently sue petitioner.

On the second issue, proceeding from the theory that the transactions entered into between petitioner and STM are but serial parts of one account, petitioner insists that its debt has been offset by its claim for STM's unpaid purchases, pursuant to Article 1279 of the Civil Code.[28] However, the trial court found, and the Court of Appeals concurred, that the purchase of sugar covered by SLDR No. 1214M was a separate and independent transaction; it was not a serial part of a single transaction or of one account contrary to petitioner's insistence. Evidence on record shows, without being rebutted, that petitioner had been paid for the sugar purchased under SLDR No. 1214M. Petitioner clearly had the obligation to deliver said commodity to STM or its assignee. Since said sugar had been fully paid for, petitioner and CSC, as assignee of STM, were not mutually creditors and debtors of each other. No reversible error could thereby be imputed to respondent appellate court when, it refused to apply Article 1279 of the Civil Code to the present case.

Regarding the third issue, petitioner contends that the sale of sugar under SLDR No. 1214M is a conditional sale or a contract to sell, with title to the sugar still remaining with the vendor. Noteworthy, SLDR No. 1214M contains the following terms and conditions:

"It is understood and agreed that by payment by buyer/trader of refined sugar and/or receipt of this document

by the buyer/trader personally or through a representative, title to refined sugar is transferred to buyer/trader and delivery to him/it is deemed effected and completed (stress supplied) and buyer/trader assumes full responsibility therefore..."[29]

The aforequoted terms and conditions clearly show that petitioner transferred title to the sugar to the buyer or his assignee upon payment of the purchase price. Said terms clearly establish a contract of sale, not a contract to sell. Petitioner is now estopped from alleging the contrary. The contract is the law between the contracting parties.[30] And where the terms and conditions so stipulated are not contrary to law, morals, good customs, public policy or public order, the contract is valid and must be upheld.[31] Having transferred title to the sugar in question, petitioner is now obliged to deliver it to the purchaser or its assignee.

As to the fourth issue, petitioner submits that STM and private respondent CSC have entered into a conspiracy to defraud it of its sugar. This conspiracy is allegedly evidenced by: (a) the fact that STM's selling price to CSC was below its purchasing price; (b) CSC's refusal to pursue its case against Teresita Ng Go; and (c) the authority given by the latter to other persons to withdraw sugar against SLDR No. 1214M after she had sold her rights under said SLDR to CSC. Petitioner prays that the doctrine of "clean hands" should be applied to preclude CSC from seeking judicial relief. However, despite careful scrutiny, we find here the records bare of convincing evidence whatsoever to support the petitioner's allegations of fraud. We are now constrained to deem this matter purely speculative, bereft of concrete proof.

WHEREFORE, the instant petition is DENIED for lack of merit. Costs against petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Records, p. 60.

[2] Ibid.

[3] Ibid.

[4] Supra Note 1, at 9.

[5] Id. at 11.

[6] Id. at 12.

[7] TSN, October 10, 1990, p. 16.

[8] Supra Note 1, at 170.

[9] CA Rollo, p. 134.

[10] Id. at 131-132.

[11] Rollo, p. 89.

[12] Id. at 95.

[13] Id. at 93-94.

[14] Id. at 24.

[15] *Spouses Felipe and Irma Buñag v. Court of Appeals*, 303 SCRA 591, 596 (1999); *Roman Catholic Archbishop of Manila v. Court of Appeals*, 336 Phil. 138, 149 (1997) citing *Gevero v. Intermediate Appellate Court*, 189 SCRA 201, 208 (1990)

[16] *Records*, p. 68.

[17] *Bordador v. Luz*, 283 SCRA 374, 382 (1997)

[18] *Connell v. McLoughlin*, 28 Or. 230; 42 P. 218.

[19] *Halladay v. Underwood*, 90 Ill. App. 130.

[20] *Internal Trust Co. v. Bridges*, 57 F. 753.

[21] *Security Co. v. Graybeal*, 85 Iowa 543, 52 N.W. 497.

[22] ROSCOE T. STEFFEN, *AGENCY- PARTNERSHIP IN A NUTSHELL* (1977) 30-31.

[23] *Supra*, at 33.

[24] *Supra* Note 11, at 87-88.

[25] *Bessing v. Prince*, 52 Cal. App. 190, 198 P. 422; *Greenlease Lied Motors v. Sadler*, 216 Iowa 302, 249 N.W. 383; *Salisbury v. Brooks*, 81 W. Va. 233, 94 S.E. 117.

[26] *State v. Parker*, 112 Conn., 39, 151 A. 325; *Rucks-Brandt Const. Co. v. Price*, 165 Okl. 178, 23 P2d 690, cert den 291 US 679, 78 L. Ed 1067, 54 S. Ct. 526.

[27] *Supra* Note 5.

[28] "Art. 1279. In order that compensation may be proper, it is necessary:

(1)....That each one of the obligors be bound principally and that he be at the same time a principal creditor of the other:

(2)....That both debts consist in a sum of money, or of the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

(3)....That the two debts be due;

(4)....That they be liquidated and demandable;

(5)....That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor."

[29] *Supra* Note 1.

[30] CIVIL CODE, art. 1308; *Rizal Commercial Banking Corp. v. Court of Appeals*, 178 SCRA 739, 744 (1989); *Escano v. Court of Appeals*, 100 SCRA 197, 202 (1980)

[31] CIVIL CODE, art. 1306; *Legarda Koh v. Ongsiaco*, 36 Phil. 185, 193 (1917); *Icaza, et al. v. Ortega*, 5 Phil. 166, 169 (1905)

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