

LIMKETKAI SONS MILLING, INC., PETITIONER, VS. COURT OF APPEALS, BANK OF THE PHILIPPINE ISLANDS AND NATIONAL BOOK STORE, RESPONDENTS.

G.R. No. 118509. September 05, 1996

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

Motion of petitioner Limketkai Sons Milling, Inc., for reconsideration of the Court's resolution of March 29, 1996, which set aside the Court's December 1, 1995 decision and affirmed in toto the Court of Appeals' decision dated August 12, 1994.

It is argued, albeit erroneously, that the case should be referred to the Court En Banc as the doctrines laid down in *Abrenica v. Gonda and De Gracia*, 34 Phil. 739, *Talosig v. Vda. de Nieba*, 43 SCRA 473, and *Villonco Realty Co. v. Bormaheco, Inc., et. al.*, 65 SCRA 352, have been modified or reversed. A more circumspect analysis of these cases vis-a-vis the case at bench would inevitably lead petitioner to the conclusion that there was neither reversal nor modification of the doctrines laid down in the *Abrenica*, *Talosig* and *Villonco* cases. In fact, the inapplicability of the principle enunciated in *Abrenica* and *Talosig* to this case has already been extensively discussed in the Court's resolution, hence the same will not be addressed anew. As regards the case of *Villonco*, petitioner mistakenly assumes that its case has a similar factual milieu with the former. The Court finds no further need to elaborate on the issue, but will simply point out the significant fact that the offer of the buyer in *Villonco*, unlike in this case, was accepted by the seller, *Bormaheco, Inc.*; and *Villonco* involves a perfected contract, a factor crucially absent in the instant case as there was no meeting of the minds between the parties.

What petitioner bewails the most is the present composition of the Third Division which deliberated on private respondents' motions for reconsideration and by a majority vote reversed the unanimous decision of December 1, 1995. More specifically, petitioner questions the assumption of Chief Justice Narvasa of the chairmanship of the Third Division and arrogantly rams its idea on how each Division should be chaired, i.e., the First Division should have been chaired by Chief Justice Narvasa, the Second Division by Mr. Justice Padilla, the next senior Justice and the Third Division by Mr. Justice Regalado, the third in line. We need only to stress that the change in the membership of the three divisions of the Court was inevitable by reason of Mr. Justice Feliciano's retirement. Such reorganization is purely an internal matter of the Court to which petitioner certainly has no business at all. In fact, the current "staggered" set-up in the chairmanships of the Divisions is similar to that adopted in 1988. In that year, the Court's Third Division was likewise chaired by then Chief Justice Fernan, while the First and Second Divisions were headed by the next senior Justices--Justices Narvasa and Melencio-Herrera, respectively.

Moreover, the Court invites the petitioner's attention to its Manifestation and Motion for Voluntary Inhibition, dated March 8, 1996 (Rollo, pp. 386-388), where it noted, without objection, the transfer of Mr. Chief Justice Narvasa, Mr. Justice Davide, Jr., and Mr. Justice Francisco to the Court's Third Division. In this Manifestation, petitioner merely moved for the inhibition of the Chief Justice on the ground that the Chief Justice previously

acted as counsel for one of the respondents, which allegation the Chief Justice vehemently denied by saying that the information upon which the petitioner relied "is utterly without foundation in fact and is nothing but pure speculation or wistful yearning." [1] It was only after the rendition of the Court's March 29, 1996 resolution when petitioner unprecedentedly objected to the composition of the Third Division. Suffice it to say that the Court with its new membership is not obliged to follow blindly a decision upholding a party's case when, after its re-examination, the same calls for a rectification. "Indeed", said the Court in *Kilosbayan, Inc. v. Morato, et. al.*, 250 SCRA 130, 136, "a change in the composition of the Court could prove the means of undoing an erroneous decision". And it is precisely in recognition of the fact that the Court is far from infallible that parties are duly accorded a remedy under the Rules of Court to bring to the Court's attention any error in the judgment by way of, among others, a motion for reconsideration. "More important than anything else", in the words of Mr. Justice Malcolm, "is that the court should be right" and to render justice where justice is due. It is therefore unfair, if not uncalled for, to brand the instant case as "one of utmost uniqueness in the annals of our judiciary." [2]

Counsel for the petitioner additionally insinuates that the ponente employed a "double standard" in deciding the case and professes bewilderment at the ponente's act of purportedly taking a position in the ponencia contrary to ponente's stand in his book. [3] It is quite unfortunate that to strengthen his unmeritorious posture, the counsel for the petitioner would resort to such unfounded insinuations, conduct which to the ponente's mind borders on contempt and is inappropriate for one who belongs to the legal profession. Be that as it may, the ponente wishes to state that he has not and has never "used a double standard" [4] in his entire career in the judiciary in the adjudication of cases. And contrary to petitioner's misimpression, the ponente never took a "questionable position in his ponencia" [5] different from "his authoritative reference and textbook" [6] which cited the case of *Abrenica v. Gonda and De Gracia* precisely because of the inherent factual differences of this case with that of *Abrenica*. Had counsel for the petitioner been meticulous, he would not have overlooked the fact that counsels for the other party never waived their right to object to the admission of an inadmissible evidence. The fact is that counsels for private respondents raised their persistent objections as early as the initial hearing and, when unceremoniously rebuffed for no apparent reason, registered their continuing objections. This is borne out by the records which the Court in its March 29, 1996 resolution cited. Thus:

"ATTY. VARGAS:

Before I proceed with the cross-examination of the witness, your Honor, may we object to the particular portion of the affidavit which attempt to prove the existence of a verbal contract to sell more specifically the answers contained in page 3. Par. 1, the whole of the answer.

"X X X X X X X X X

"COURT:

Objection overruled.

"ATTY. VARGAS:

Your Honor, what has been denied by the Court was the motion for preliminary hearing on affirmative defenses. The statement made by the witness to prove that there was a verbal contract to sell is inadmissible in evidence in this case because an agreement must be in writing.

"COURT:

Go ahead, that has been already overruled.

"ATTY. VARGAS:

So may we reiterate our objection with regards to all other portions of the affidavit which deal on the verbal contract. (TSN, Feb. 28, 1989, pp. 3-5: Emphasis supplied.)"[7]

"x x x x x x x x

"ATTY. CORNAGO:

Before we proceed, we would like to make of record our continuing objection in so far as questions and answers propounded to Pedro Revilla dated February 27, 1989, in so far as questions would illicit (sic) answers which would be violative of the best evidence rule in relation to Art. 1403. I refer to questions nos. 8, 13, 16 and 19 of the affidavit of this witness which is considered as his direct testimony." (T.S.N., June 29, 1990, p.2)

"ATTY. CORNAGO:

May we make of record our continued objection on the testimony which is violative of the best evidence rule in relation to Art. 1403 as contained in the affidavit particularly questions Nos. 12, 14, 19 and 20 of the affidavit of Alfonso Lim executed on February 24, 1989. xxx." (T.S.N., June 28, 1990, p. 8)."[8]

Petitioner may not now feign ignorance of these pertinent objections. The Court finds no cogent reason to depart from its ruling in its March 29, 1996 resolution. To reiterate:

"Corollarily, as the petitioner's exhibits failed to establish the perfection of the contract of sale, oral testimony cannot take their place without violating the parol evidence rule.[9] It was therefore irregular for the trial court to have admitted in evidence testimony to prove the existence of a contract of sale of a real property between the parties despite the persistent objection made by private respondents' counsels as early as the first scheduled hearing. While said counsels cross-examined the witnesses, this, to our view, did not constitute a waiver of the parol evidence rule. The Talosig v. Vda. de Nieba,[10] and Abrenica v. Gonda and de Gracia[11] cases cited by the Court in its initial decision, which ruled to the effect that an objection against the admission of any evidence must be made at the proper time, i.e., "x x x at the time question is asked",[12] and that if not so made it will be understood to have been waived, do not apply as these two cases involved facts[13] different from the case at bench. More importantly, here, the direct testimonies of the witnesses were presented in "affidavit-form" where prompt objection to inadmissible evidence is hardly possible, whereas the direct testimonies in these cited cases were delivered orally in open court. The best that counsels could have done, and which they did, under the circumstances was to preface the cross-examination with objection."

"x x x x x x x x

"Counsels should not be blamed and, worst, penalized for taking the path of prudence by choosing to cross-examine the witnesses instead of keeping mum and letting the inadmissible testimony in "affidavit form" pass without challenge. We thus quote with approval the observation of public respondent Court of Appeals on this point:

"As a logical consequence of the above findings, it follows that the court a quo erred in allowing the appellee to introduce parol evidence to prove the existence of a perfected contract of sale over and above the objection of the counsel for the defendant-appellant. The records show that the court a quo allowed the direct testimony of the witnesses to be in affidavit form subject to cross-examination by the opposing counsel. If the purpose thereof was to prevent the opposing counsel from objecting timely to the direct testimony, the scheme failed for as early as the first hearing of the case on February 28, 1989 during the presentation of the testimony in affidavit form of Pedro Revilla, Jr., plaintiff-appellee's first witness, the presentation of such testimony was already objected to as inadmissible."[14]

[Emphasis in the original]

The other points raised by petitioner need no further discussion as they have already been considered in the

resolution sought to be reconsidered, and no compelling reason is shown to urge this Court to change its stand.

ACCORDINGLY, petitioner's motion for reconsideration and motion to refer the case to the Court En Banc are hereby DENIED WITH FINALITY, without prejudice to any and all appropriate actions that the Court may take not only against counsel on record for the petitioner for his irresponsible remarks, but also against other persons responsible for the reckless publicity anent this case calculated to maliciously erode the people's faith and confidence in the integrity of this Court.

SO ORDERED.

Narvasa, C.J. (Chairman), concur.

Davide, Jr., J., see concurring opinion.

Melo, J., dissents.

Panganiban, J., joins J. Melo's dissent.

[1] Rollo, p. 391.

[2] Petitioner's Supplemental Reply and Manifestation dated August 19, 1996, p. 1.

[3] Pleadings and Trial Practice, Third Edition, 1990, p.657

[4] Reply To Comment for the petitioner, p.8.

[5] Id.

[6] Id.

[7] CA Decision, pp.13-14; Rollo, pp. 56-57; Pedro Revilla, Jr., TSN, February 28, 1989, pp. 3-5.

[8] Memorandum For Respondent Bank of the Phil. Islands, April 24, 1995, p.16; Rollo, p.229.

[9] Rule 130, Section 9, Rules of Court.

[10] 43 SCRA 473.

[11] 34 Phil. 739.

[12] Abrenica, (supra) at p.746, citing Kreigh v. Sherman, 105 Ill., 49; 46 Am. Dig., Century Ed., 932.

[13] In Talosig v. Vda. de Nieba, for instance, a deed of sale executed between the parties was undisputed, as well as the existence of receipts evidencing payment; while in Abrenica v. Gonda and De Gracia, counsel for the defendant never raised any objection to the examination of the witnesses which elicited testimony tending to prove the contract. Only after the examination was terminated did counsel move to strike out all the given testimony.

[14] CA Decision, pp.12-13; Rollo, pp.55-56.

DISSENTING OPINION

MELO, J.,

I dissent for the same reason stated in my ponencia dated Dec. 1, 1995 and my dissenting resolution dated March 29, 1996. I also dissent in the action of my colleagues not to refer the case to Court En Banc. Because of the peculiar circumstances of the voting herein brought about by the change in the membership of the Division, I believe that referring the case to the Court En Banc would be most appropriate so that the other members would

be consulted and in order that those who had taken part in the previous deliberation thereof would not in effect be disenfranchised.

CONCURRING OPINION

DAVIDE, JR., J.:

I fully concur with the resolution penned by Mr. Justice Ricardo J. Francisco disposing of the motion to reconsider the resolution of 29 March 1996. However, to belie any further unfounded insinuations contrived to cast doubt on the reorganization of the Third Division, I must stress certain points.

The reorganization of the three Divisions of the Court was a consequence of the retirement of Mr. Justice Florentino P. Feliciano, and formally effected through the issuance by the Chief Justice of Special Order No. 62 on 15 December 1995, which reads as follows:

ADJUDICATION OF CASES

COMPOSITION OF THE THREE DIVISIONS OF THE SUPREME COURT EFFECTIVE JANUARY 2, 1996

SPECIAL ORDER NO. 62.

In view of the retirement of Honorable FLORENTINO P. FELICIANO as Associate Justice of the Supreme Court, the following are hereby designated Chairmen and Members of the respective divisions:

First Division

Justice Teodoro R. Padilla -Chairman

Justice Josue N. Bellosillo -Member

Justice Jose C. Vitug - "

Justice Santiago M. Kapunan - "

Justice Regino C. Hermosisima, Jr.

Second Division

Justice Florenz D. Regalado -Chairman

Justice Flerida Ruth P. Romero -Member

Justice Reynato S. Puno - "

Justice Vicente V. Mendoza - "

Third Division

Chief Justice Andres R. Narvasa -Chairman

Justice Hilario G. Davide, Jr. -Working Chairman

Justice Jose A.R. Melo -Member

Justice Ricardo J. Francisco - "

Justice Artemio V. Panganiban - "

This Special Order shall take effect on January 2, 1996.

Manila, Philippines, December 15, 1995.

(Sgd.) ANDRES R. NARVASA

Chief justice

This reorganization, like those before it, was made only upon prior consultation with and approval of the Members of the Court. The petitioner itself found such reorganization "long overdue" (Rollo, 387).

The record will show that the motions for reconsideration of the decision of 1 December 1995 were filed several days after the issuance of Special Order No. 62. That of private respondent National Book Store was filed at 2:57 p.m. on 26 December 1995 and that of private respondent Bank of the Philippine Islands at 3:31 p.m. likewise on 26 December 1995.

The motions for reconsideration, together with the motion for leave to file consolidated comment and the consolidated comment, were calendared for the first time on the agenda of the Third Division of 5 February 1996. It was only on 29 March 1996 when the resolution granting the motions for reconsideration was promulgated after thorough deliberations on the issues raised.

Any insinuation then that the reorganization was accomplished under "unusual" circumstances to favor the private respondents and that the new Members of the Third Division had no time to study the case because they "had hardly warmed their seats," are completely without basis.

As to the motion to refer to the Court En Banc for its resolution the motion for reconsideration of the Resolution of 29 March 1996, the applicable rules thereon are prescribed by Circular No. 2-89 dated 7 February 1989 and effective 1 March 1989, and Bar Matter No. 209, as amended by the resolution of 9 February 1993.

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