SEA COMMERCIAL COMPANY, INC., PETITIONER, VS. THE HONORABLE COURT OF APPEALS, JAMANDRE INDUSTRIES, INC. AND TIRSO JAMANDRE, RESPONDENTS.

G.R. No. 122823. November 25, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

In this petition for review by certiorari, SEA Commercial Company, Inc. (SEACOM) assails the decision of the Court of Appeals in CA-G.R. CV NO. 31263 affirming in toto the decision of the Regional Trial Court of Manila, Branch 5, in Civil Case No. 122391, in favor of Jamandre Industries, Inc. (JII) et al., the dispositive portion of which reads:

> "WHEREFORE, judgment is hereby rendered in favor of the defendant and against the plaintiff, ordering the plaintiff:
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> 1) To pay defendant the sum of P66,156.15 (minus 18,843.85) with legal interest thereon, from the date of the filing of the counterclaim until fully paid;
>
> 2) To pay defendant P2,000.00 as moral and exemplary damages;
>
> 3) To pay attorney's fees in the sum of P10,000.00; and
>
> 4) To pay the costs of this suit.
>
> SO ORDERED."

SEACOM is a corporation engaged in the business of selling and distributing agricultural machinery, products and equipment. On September 20, 1966, SEACOM and JII entered into a dealership agreement whereby SEACOM appointed JII as its exclusive dealer in the City and Province of Iloilo[1] Tirso Jamandre executed a suretyship agreement binding himself jointly and severally with JII to pay for all obligations of JII to SEACOM[2]. The agreement was subsequently amended to include Capiz in the territorial coverage and to make the dealership agreement on a non-exclusive basis[3]. In the course of the business relationship arising from the dealership agreement, JII allegedly incurred a balance of P18,843.85 for unpaid deliveries, and SEACOM brought action to recover said amount plus interest and attorney's fees.

JII filed an Answer denying the obligation and interposing a counterclaim for damages representing unrealized profits when JII sold to the Farm System Development Corporation (FSDC) twenty one (21) units of Mitsubishi power tillers. In the counterclaim, JII alleged that as a dealer in Capiz, JII contracted to sell in 1977 twenty-four (24) units of Mitsubishi power tillers to a group of farmers to be financed by said corporation, which fact JII allegedly made known to petitioner, but the latter taking advantage of said information and in bad faith, went directly to FSDC and dealt with it and sold twenty one (21) units of said tractors, thereby depriving JII of unrealized profit of eighty-five thousand four hundred fifteen and 61/100 pesos (P85,415.61).

The trial court rendered its decision on January 24, 1990 ordering JII to pay SEACOM the amount of Eighteen Thousand Eight Hundred Forty Three and 85/100 (P18,843.85) representing its outstanding obligation. The trial court likewise granted JII's counterclaim for unrealized profits, and for moral and exemplary damages and attorney' fees as above quoted.

SEACOM appealed the decision on the counterclaim.

The Court of Appeals held that while there exists no agency relationship between SEACOM and JII, SEACOM is liable for damages and unrealized profits to JII.

> "This Court, however, is convinced that with or without the existence of an agency relationship between appellant SEACOM and appellee JII and notwithstanding the error committed by the lower court in finding that an agency relationship existed between appellant and defendant corporation the former is liable for the unrealized profits which the latter could have gained had not appellant unjustly stepped in and in bad faith unethically intervened.
>
> It should be emphasized that the very purpose of the dealership agreement is for SEACOM to have JII as its dealer to sell its products in the provinces of Capiz and Iloilo. In view of this agreement, the second assigned error that the lower court erred in holding that appellant learned of the FSDC transaction from defendant JII is clearly immaterial and devoid of merit. The fact that the dealership is on a non-exclusive basis does not entitle appellant SEACOM to join the fray as against its dealer. To do so, is to violate the norms of conduct enjoined by Art. 19 of the Civil Code. By virtue of such agreement, the competition in the market as regards the sale of farm equipment shall be between JII, as the dealer of SEACOM and other companies, not as against SEACOM itself. However, SEACOM, not satisfied with the presence of its dealer JII in the market, joined the competition even as the against the latter and, therefore, changed the scenario of the competition thereby rendering inutile the dealership agreement which they entered into the manifest prejudice of JII. Hence, the trial court was correct when it applied Art. 19 of the Civil Code in the case at bar in that appellant SEACOM acted in bad faith when it competed with its own dealer as regards the sale of farm machineries, thereby depriving appellee JII of the opportunity to gain a clear profit of P85,000.00."
>
> and affirmed the judgment appealed from in toto.

Hence this petition for review on certiorari, which submits the following reasons for the allowance thereof:

> THE RESPONDENT COURT OF APPEALS DECIDED QUESTIONS OF SUBSTANCE IN A WAY NOT IN ACCORDANCE WITH LAW AND JURISPRUDENCE, CONSIDERING THAT:
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> A
>
> THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN RULING THAT PETITIONER IS LIABLE TO PAY DAMAGES AND UNREALIZED PROFITS TO THE PRIVATE RESPONDENTS DESPITE THE FACT THAT NO AGENCY RELATIONSHIP EXISTS BETWEEN THEM.
>
> B
>
> THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN RULING THAT PETITIONER ACTED IN BAD FAITH AGAINST THE PRIVATE RESPONDENT CORPORATION DESPITE THE FACT THAT SAID RULING IS CONTRARY TO THE EVIDENCE ON RECORD.
>
> C
>
> THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE NON-EXCLUSIVITY CLAUSE IN THE DEALERSHIP AGREEMENT EXECUTED BETWEEN THE PETITIONER AND PRIVATE RESPONDENT CORPORATION PRECLUDES THE PETITIONER FROM

COMPETING WITH THE PRIVATE RESPONDENT CORPORATION.

D

THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN RULING THAT PRIVATE RESPONDENT IS ENTITLED TO UNREALIZED PROFITS, MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.[4]

Petitioner SEACOM disputes the conclusion of the Court of Appeals that despite the fact that no agency relationship existed between the parties, the SEACOM is still liable in damages and unrealized profits for the reason that it acted in bad faith. Petitioner SEACOM invokes the non-exclusivity clause in the dealership agreement and claims that the transaction with FSDC was concluded pursuant to a public bidding and not on the basis of alleged information it received from private respondent Tirso Jamandre. Moreover, petitioner SEACOM claims that it did not underprice its products during the public bidding wherein both SEACOM and JII participated. Petitioner also disputes the award of moral damages to JII which is a corporation, in the absence of any evidence that the said corporation had a good reputation which was debased.

Private respondents in their comment, contends that the four assigned errors raise mixed questions of fact and law and are therefore beyond the jurisdiction of the Supreme Court which may take cognizance of only questions of law. The assigned errors were also refuted to secure affirmance of the appealed decision. JII maintains that the bidding set by FSDC on March 24, 1997 was scheduled after the demonstration conducted by JII, and after JII informed SEACOM about the preference of the farmers to buy Mitsubishi tillers. JII further rebuts the SEACOM's contention that the transaction with FSDC was pursuant to a public bidding with full disclosure to the public and private respondent JII considering that JII had nothing to do with the list of 37 bidders and cannot be bound by the listing made by SEACOM's employee; moreover, JII did not participate in the bidding not having been informed about it. Furthermore, the price at which SEACOM sold to FSDC was lower than the price it gave to JII. Also, even if the dealership agreement was not exclusive, it was breached when petitioner in bad faith sold directly to FSDC with whom JII had previously offered the subject farm equipment. With respect to the awards of moral and exemplary damages, JII seeks an affirmation of the ruling of the Court of Appeals justifying the awards.

SEACOM filed Reply defending the jurisdiction of this Court over the instant petition since the decision of the Court of Appeals was "based on a misapprehension of facts". SEACOM insists that FSDC's purchase was made pursuant to a public bidding, and even if SEACOM did not participate thereon, JII would not necessarily have closed the deal since thirty seven (37) bidders participated. SEACOM contends that no evidence was presented to prove that the bidding was a fraudulent scheme of SEACOM and FSDC. SEACOM further controverts JII's contention that JII did not take part in the bidding as Tirso Jamandre was one of the bidders and that SEACOM underpriced its products to entice FSDC to buy directly from it. In fine, JII is not entitled to the award of unrealized profits and damages.

In its Rejoinder, private respondents insist that there is an agency relationship, citing the evidence showing that credit memos and not cash vouchers were issued to JII by SEACOM for every delivery from November 26, 1976 to December 24, 1978. Private respondents maintain that SEACOM "torpedoed the emerging deal between JII and FSDC after being informed about it by JII by dealing directly with FSDC at a lower price" and after betraying JII, SEACOM would cover up the deceit by conniving with FSDC to post up a "sham public bidding."

SEACOM's sur-rejoinder contains basically a reiteration of its contention in previous pleadings. Additionally, it is contended that private respondents are barred from questioning in their Rejoinder, the finding of the Court of Appeals that there is no agency relationship between the parties since this matter was not raised as error in their

comment.

The core issue is whether SEACOM acted in bad faith when it competed with its own dealer as regards the sale of farm machineries to FSDC.

Both the trial court and the Court of Appeals held affirmatively; the trial court found that JII was an agent of SEACOM and the act of SEACOM in dealing directly with FSDC was unfair and unjust to its agent, and that there was fraud in the transaction between FSDC and SEACOM to the prejudice of JII. On the other hand, the Court of Appeals ruled that there was no agency relationship between the parties but SEACOM is nevertheless liable in damages for having acted in bad faith when it competed with its own dealer in the sale of the farm machineries to FSDC. Both courts invoke as basis for the award Article 19 of the Civil Code which reads as follows:

> "Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith."

The principle of abuse of rights stated in the above article, departs from the classical theory that "he who uses a right injures no one". The modern tendency is to depart from the classical and traditional theory, and to grant indemnity for damages in cases where there is an abuse of rights, even when the act is not illicit.[5]

Article 19 was intended to expand the concept of torts by granting adequate legal remedy for the untold number of moral wrongs which is impossible for human foresight to provide specifically in statutory law.[6] If mere fault or negligence in one's acts can make him liable for damages for injury caused thereby, with more reason should abuse or bad faith make him liable. The absence of good faith is essential to abuse of right. Good faith is an honest intention to abstain from taking any unconscientious advantage of another, even through the forms or technicalities of the law, together with an absence of all information or belief of fact which would render the transaction unconscientious. In business relations, it means good faith as understood by men of affairs.[7]

While Article 19 may have been intended as a mere declaration of principle[8], the "cardinal law on human conduct" expressed in said article has given rise to certain rules, e.g. that where a person exercises his rights but does so arbitrarily or unjustly or performs his duties in a manner that is not in keeping with honesty and good faith, he opens himself to liability.[9] The elements of an abuse of rights under Article 19 are: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another.[10]

The issue whether JII is "entitled to recovery on its counterclaim for unrealized profit in the twenty one (21) units of Mitsubishi power tillers sold by SEACOM to FSDC" was resolved by the trial court in favor of JII on the basis of documentary evidence[11] showing that (1) JII has informed SEACOM as early as February 1977 of the promotions undertaken by JII for the sale of 24 contracted units to FSDC and in connection therewith, requested a 50% discount to make the price competitive, and to increase the warranty period for eight months to one year. In said letter Jamandre clarified that they were not amenable to SEACOM's offering directly to FSDC" and to be only given the usual overriding commission as "we have considerable investments on this transaction". (2) In response, the general sales manager of SEACOM declined to give the requested 50% discount and offered a "less 30% less 10% up to end March xxx on cash before delivery basis", granted the requested extension of the warranty period and stated that "we are glad to note that you have quite a number of units pending with the FSDC."

The trial court ruled that with said information, SEACOM dealt directly with FSDC and offered its units at a lower price, leaving FSDC "no choice but to accept the said offer of (SEACOM)".

In affirming the judgment of the of the trial court, the Court of Appeals held that by virtue of the dealership

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agreement the competition in the market as regards the sale of farm equipment shall be between JII, as the dealer of SEACOM, and other companies, not as against SEACOM itself, the Court stated:

> "However, SEACOM not satisfied with the presence of its dealer JII in the market, joined the competition even as against the latter, and thereby changed the scenario of the competition thereby rendering inutile the dealership agreement which they entered into to the manifest prejudice of JII. Hence the trial court trial court was correct when it applied Art. 19 of the Civil Code in the case at bar in that appellant SEACOM acted in bad faith when it competed with its own dealer as regards the sale of farm machineries, thereby depriving appellee JII of the opportunity to gain a clear profit of P85,000.00."

We find no cogent reason to overturn the factual finding of the two courts that SEACOM joined the bidding for the sale of the farm equipment after it was informed that JII was already promoting the sales of said equipment to the FSDC. Moreover, the conclusion of the trial court that the SEACOM offered FSDC a lower price than the price offered by JII to FSDC is supported by the evidence: the price offered by JII to FSDC is P27,167 per unit[12] but the prices at which SEACOM sold to FSDC were at P22,867.00 for Model CT 83-2, P21,093.50 for model CT 83-E, and P18,979.25 for model CT 534. The fact that SEACOM may have offered to JII, in lieu of a requested 50% discount, a discount effectively translating to 37% of the list price and actually sold to FSDC at 35% less than the list price[13] does not detract from the fact that by participating in the bidding of FSDC, it actually competed with its own dealer who had earlier conducted demonstrations and promoted its own products for the sale of the very same equipment, Exh. "N" for the plaintiff confirms that both SEACOM and Jamandre participated in the bidding.[14] However, the SEACOM was awarded the contract directly from Manila.[15] The testimony of Tirso Jamandre that JII was the sole representative of SEACOM in the local demonstrations to convince the farmers and cooperative officers to accept the Mitsubishi brand of equipment in preference to other brands, was unrebutted by SEACOM.

Clearly, the bad faith of SEACOM was established. By appointing as a dealer of its agricultural equipment, SEACOM recognized the role and undertaking of JII to promote and sell said equipment. Under the dealership agreement, JII was to act as a middleman to sell SEACOM's products, in its area of operations, i.e. Iloilo and Capiz provinces, to the exclusion of other places,[16] to send its men to Manila for training on repair, servicing and installation of the items to be handled by it, and to comply with other personnel and vehicle requirements intended for the benefit of the dealership.[17] After being informed of the demonstrations JII had conducted to promote the sales of SEACOM equipment, including the operations at JII's expense conducted for five months, and the approval of its facilities (service and parts) by FSDC,[18] SEACOM participated in the bidding for the said equipment at a lower price, placing itself in direct competition with its own dealer. The actuations of SEACOM are tainted by bad faith.

Even if the dealership agreement was amended to make it on a non-exclusive basis,[19] SEACOM may not exercise its right unjustly or in a manner that is not in keeping with honesty or good faith; otherwise it opens itself to liability under the abuse of right rule embodied in Article 19 of the Civil Code above-quoted. This provision, together with the succeeding article on human relation, was intended to embody certain basic principles "that are to be observed for the rightful relationship between human beings and for the stability of the social order."[20] What is sought to be written into the law is the pervading principle of equity and justice above strict legalism.[21]

We accordingly resolve to affirm the award for unrealized profits. The Court of Appeals noted that the trial court failed to specify to which the two appellees the award for moral and exemplary damages is granted. However, in view of the fact that moral damages are not as a general rule granted to a corporation, and that Tirso Jamandre was the one who testified on his feeling very aggrieved and on his mental anguish and sleepless nights thinking of how SEACOM "dealt with us behind (our) backs",[22] the award should go to defendant Jamandre, President of

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JII.

WHEREFORE, the judgment appealed from is AFFIRMED with the modification that the award of P2,000.00 in moral and exemplary damages shall be paid to defendant Tirso Jamandre.

Costs against appellant.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

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[1] Exh. "A".

[2] Exh. "B".

[3] Exh. "D".

[4] Rollo, pp. 22-23.

[5] I, Tolentino, Civil Code of the Philippines, p. 60 et seq.

[6] PNB vs. CA, 83 SCRA 237.

[7] Tolentino, supra, at pp. 61-62.

[8] Velayo vs. Shell Co., 100 Phil. 186.

[9] Vitug, Compendium on Civil Law and Jurisprudence, Rev ed., at p. 17 citing Sanchez vs. Rigos, 45 SCRA 368; Philippine National Bank vs. Court of Appeals, 83 SCRA 237; Llorente vs. Sandiganbayan, 202 SCRA 309.

[10] II Sangco, Torts and Damages at pp. 753 et seq.

[11] Exh. "6" & " 7".

[12] Exh. "8"; Tsn., July 30, 1981, pp. 65-66.

[13] Tsn., July 27, 1982, pp. 19-21.

[14] Tsn., November 25, 1982, pp. 15-17.

[15] Tsn, April 5, 1983, pp. 16-21.

[16] Exh. "D".

[17] Exhibit "A".

[18] Exhibit "6".

[19] Exhibit "D".

[20] Report, Code Commission, p. 39.

[21] Sangco, Torts and Damages, at p. 301.

[22] Tsn., July 30, 1981, p. 70.

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