

**VICTORINO MAGAT, JR. SUBSTITUTED BY HEIRS, OLIVIA D. MAGAT,
AND MINORS MA. DULCE MAGAT, MA. MAGNOLIA MAGAT, RONALD
MAGAT AND DENNIS MAGAT, PETITIONERS, VS. COURT OF APPEALS
AND ...**

G.R. No. 124221. August 04, 2000

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal[1] from the decision of the Court of Appeals[2] reversing the decision of the Regional Trial Court of Makati, Metro Manila,[3] ruling in favor of respondent Santiago A. Guerrero and dismissing petitioners' complaint.

First, the facts.

Private respondent Santiago A. Guerrero (hereinafter referred to as "Guerrero") was President and Chairman of[4] "Guerrero Transport Services", a single proprietorship.[5]

Sometime in 1972, Guerrero Transport Services won a bid for the operation of a fleet of taxicabs within the Subic Naval Base, in Olongapo. As highest bidder, Guerrero was to "provide radio-controlled taxi service within the U. S. Naval Base, Subic Bay, utilizing as demand requires... 160 operational taxis consisting of four wheel, four-door, four passenger, radio controlled, meter controlled, sedans, not more than one year..."[6]

On September 22, 1972, with the advent of martial law, President Ferdinand E. Marcos issued Letter of Instruction No. 1 (hereinafter referred to as "the LOI"). We reproduce the text, as follows:

"Letter of Instruction No. 1

"SUBJECT:

SEIZURE AND CONTROL OF ALL PRIVATELY OWNED NEWSPAPERS, MAGAZINES, RADIO AND
TELEVISION FACILITIES AND ALL OTHER MEDIA OF COMMUNICATION

"To:

1. The Press Secretary

Office of the President

Manila

"2. The Secretary

Department of National

Defense

Camp E. Aguinaldo, Q.C.

"In view of the present national emergency which has been brought about by the activities of those who are actively engaged in a criminal conspiracy to seize political and state power in the Philippines and to take over the Government by force and violence the extent of which has now assumed the proportion of an actual war against our people and their legitimate Government, and pursuant to Proclamation No. 1081 dated September 21, 1972, and in my capacity as commander in chief of all the armed forces of the Philippines and in order to prevent the use of privately owned newspapers, magazines, radio and television facilities and all other media of communications, for propaganda purposes against the government and its duly constituted authorities or for any purpose that tend to undermine the faith and confidence of the people in our government and aggravate the present national emergency, you are hereby ordered forthwith to take over and control or cause the taking over and control of all such newspapers, magazines, radio and television facilities and all other media of communications, wherever they are, for the duration of the present national emergency, or until otherwise ordered by me or by my duly designated representative.

"In carrying out the foregoing order you are hereby also directed to see to it that reasonable means are employed by you and your men and that injury to persons and property must be carefully avoided."

On September 25, 1972, pursuant to the aforequoted Letter of Instruction, the Radio Control Office issued Administrative Circular No. 4 (hereinafter referred to as "the Admin. Circular"), herein quoted in full:

"SUBJECT:

SUSPENDING THE ACCEPTANCE AND PROCESSING OF APPLICATIONS FOR RADIO STATION CONSTRUCTION PERMITS AND FOR PERMITS TO OWN AND/OR POSSESS RADIO TRANSMITTERS OR TRANSCEIVERS.

"In view of the existence of a state of emergency and the declaration by the President of martial law in the entire country under Proclamation No. 1081 dated September 21, 1972, effective immediately the acceptance

and processing by the radio control office of applications for radio stations constructions permits and for permits to possess, own, transfer, purchase and sale of radio transmitters and transreceivers as well as manufacturers and dealer's permits of said equipment is hereby suspended.

"Exempted from this circular are applications for radio station construction permits and for permits to possess, own, transfer, purchase and sell radio transmitters and transceivers for the following radio stations:

"1. Aeronautical Stations;

"2. Aeronautical Fixed Stations;

"3. Aircraft Stations;

"4. Coastal Stations; and

"5. Ship Stations.

"This circular shall be strictly observed until lifted upon proper instructions from higher authorities."

On September 25, 1972, Guerrero and Victorino D. Magat (hereinafter referred to as Victorino), as General Manager of Spectrum Electronic Laboratories, a single proprietorship, executed a letter-contract for the purchase of transceivers at a quoted price of US\$77,620.59, FOB Yokohoma. Victorino was to deliver the transceivers within 60 to 90 days after receiving notice from Guerrero of the assigned radio frequency,[7] "taking note of Government Regulations." [8]

The contract was signed and Victorino contacted his Japanese supplier, Koide & Co., Ltd. and placed an order for the transceivers.

On September 29, 1972, Navy Exchange Officer, A. G. Mason confirmed that Guerrero won the bid for the commercial transportation contract.[9]

On October 4, 1972, middle man and broker[10] Isidro Q. Aligada of Reliance Group Engineers, Inc. (hereinafter referred to as "Aligada"), wrote Victorino, informing him that a radio frequency was not yet assigned to Guerrero and that government regulations might complicate the importation of the transceivers. However, in the same letter, Victorino was advised to advise his supplier "to proceed (with) production pending frequency information." Victorino was also assured of Guerrero's financial capability to comply with the contract.[11]

On October 6, 1972, Guerrero informed Aligada of the frequency number[12] assigned by Subic Naval Base authorities. Aligada was instructed to "proceed with the order thru Spectrum Electronics Laboratories." [13]

On October 7, 1972, Aligada informed Magat of the assigned frequency number. Aligada also advised Victorino to "proceed with the order upon receipt of letter of credit." [14]

On January 10, 1973, Guerrero applied for a letter of credit with the Metropolitan Bank and Trust Company.[15] This application was not pursued.[16]

On March 27, 1973, Victorino, represented by his lawyer, Atty. Sinesio S. Vergara, informed Guerrero that the order with the Japanese supplier has not been canceled. Should the contract be canceled, the Japanese firm would

forfeit 30% of the deposit and charge a cancellation fee in an amount not yet known, Guerrero to bear the loss. Further, should the contract be canceled, Victorino would demand an additional amount equivalent to 10% of the contract price.[17]

Unable to get a letter of credit from the Central Bank due to the refusal of the Philippine government[18] to issue a permit to import the transceivers,[19] Guerrero commenced operation of the taxi cabs within Subic Naval Base, using radio units borrowed from the U.S. government (through the Subic Naval Base authorities).[20] Victorino thus canceled his order with his Japanese supplier.

On May 22, 1973, Victorino filed with the Regional Trial Court, Makati a complaint for damages arising from breach of contract against Guerrero.[21]

On June 7, 1973, Guerrero moved to dismiss the complaint on the ground that it did not state a cause of action.[22]

On June 16, 1973, the trial court[23] granted the motion and dismissed the complaint.[24]

On July 11, 1973, Victorino filed a petition for review on certiorari with this Court assailing the dismissal of the complaint.[25]

On April 20, 1983, this Court[26] ruled that the complaint sufficiently averred a cause of action. We set aside the order of dismissal and remanded the case to the trial court for further proceedings, to wit:[27]

"ACCORDINGLY, the questioned order of dismissal is hereby set aside and the case ordered remanded to the court of origin for further proceedings. No costs.

"SO ORDERED."

On November 27, 1984, the trial court[28] ordered that the case be archived for failure of Victorino to prosecute.[29]

On March 11, 1985, petitioners, Olivia, Dulce, Ma. Magnolia, Ronald and Dennis Magat (hereinafter referred to as "heirs of Victorino"), moved to reinstate the case and to substitute Victorino in its prosecution. Apparently, Victorino died on February 18, 1985.[30]

On April 29, 1985, the trial court granted the motion.[31]

On July 12, 1991, the trial court decided in favor of the heirs of Victorino and ordered Guerrero to pay temperate, moral and exemplary damages, and attorney's fees, disposing of the case in this wise :[32]

"WHEREFORE, judgment is rendered for the substituted plaintiffs and against the defendant

"1. Ordering defendant to pay substituted plaintiffs the sum of P25,000.00 for temperate damages for injury to plaintiff's business dealings with foreign and local businessmen;

"2. P50,000.00 as moral damages;

"3. P25,000.00 as exemplary damages; and

"4. P20,000.00 as attorney's fees.

"SO ORDERED."

On August 21, 1991, Guerrero appealed to the Court of Appeals.[33]

On October 4, 1995, the Court of Appeals rendered the decision appealed from, disposing as follows:[34]

"WHEREFORE, judgment is hereby rendered DISMISSING the complaint.

"No pronouncements as to costs.

" SO ORDERED."

On October 26, 1995, the heirs of Victorino filed with the Court of Appeals a motion for reconsideration.[35]

On March 12, 1996, the Court of Appeals denied the motion for reconsideration.[36]

Hence, this appeal.[37]

The issue is whether the contract between Victorino and Guerrero for the purchase of radio transceivers was void. Stated differently, whether the transceivers subject of the contract were banned/ contraband items prohibited by the LOI and the Administrative Circular to import.

The contract was valid; the radio transceivers were not contraband.

"Contraband" generally refers to "any property which is unlawful to produce or possess." It refers to goods which are exported and imported into a country against its laws.[38]

In declaring the contract void ab initio, the Court of Appeals ruled that the importation of the transceivers meant the inevitable passing of such goods through Philippine Ports, where the LOI and the Administrative Circular have to be observed and applied with full force and effect.[39] The Court of Appeals declared that the proposed importation of such goods was contrary to law, hence, the nullity of the contract.[40]

We do not agree. The contract was not void ab initio. Nowhere in the LOI and Admin. Circular is there an express ban on the importation of transceivers.

The LOI and Administrative Circular did not render "radios and transceivers" illegal per se. The Administrative Circular merely ordered the Radio Control Office to suspend the "acceptance and processing of applications... for permits to possess, own, transfer, purchase and sell radio transmitters and transceivers..."[41] Therefore, possession and importation of the radio transmitters and transceivers was legal provided one had the necessary license for it.[42] Transceivers were not prohibited but merely regulated goods. The LOI and Administrative Circular did not render the transceivers outside the commerce of man. They were valid objects of the contract.[43]

Affirming the validity of the contract, we next discuss whether the contract was breached.

Guerrero testified that a permit to import the transceivers from Japan was denied by the Radio Control Board. He stated that he, together with Aligada, Victorino and a certain John Dauden personally went to the Radio Control Office, and were denied a permit to import. They also went to the Office of the President, where Secretary Ronaldo B. Zamora explained that radios were "banned like guns because of martial law." [44] Guerrero testified that this prevented him from securing a letter of credit from the Central Bank.[45] This testimony was not rebutted.

The law provides that "[w]hen the service (required by the contract) has become so manifestly beyond the contemplation of the parties, the obligor may also be released therefrom, in whole or in part." [46] Here, Guerrero's inability to secure a letter of credit and to comply with his obligation was a direct consequence of the denial of the permit to import. For this, he cannot be faulted.

Even if we assume that there was a breach of contract, damages cannot be awarded. *Damnum absque injuria*.

There was no bad faith.[47] Bad faith does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It means a breach of a known duty through some

motive or interest or ill will that partakes of the nature of fraud.[48] Guerrero honestly relied on the representations of the Radio Control Office and the Office of the President.

True, Guerrero borrowed equipment from the Subic Naval Base authorities at zero cost.[49] This does not automatically translate to bad faith. Guerrero was faced with the danger of the cancellation of his contract with Subic Naval Base. He borrowed equipment as a prudent and swift alternative. There was no proof that he resorted to this option with a deliberate and malicious intent to dishonor his contract with Victorino. An award of damages surely cannot be based on mere hypotheses, conjectures and surmises. Good faith is presumed, the burden of proving bad faith rests on the one alleging it.[50] Petitioners did not effectively discharge the burden in this case.

To recover moral damages in an action for breach of contract, the breach must be palpably wanton, reckless, malicious, in bad faith, oppressive or abusive.[51] This is not the case here.

Exemplary damages also cannot be awarded. Guerrero did not act in a wanton, fraudulent, reckless, oppressive or malevolent manner.[52]

Neither can actual damages be awarded. True, indemnification for damages contemplates not only actual loss suffered (*damnum emergens*) but unrealized profits (*lucrum cessans*) as well.[53] However, to be entitled to adequate compensation for pecuniary loss, the loss must be actually suffered and duly proved.[54] To recover actual damages, the amount of loss must not only be capable of proof, but must be proven with a reasonable degree of certainty. The claim must be premised upon competent proof or upon the best evidence obtainable,[55] such as receipts[56] or other documentary proof.

Only the testimony of Aligada was presented to substantiate petitioners' claim for unrealized profits.[57] Aligada testified that as a result of the cancellation of the contract, Victorino had to suspend transactions with his Japanese supplier for six (6) months. Aligada stated that the volume of Victorino's business with Subic Naval Base also diminished significantly. Aligada approximated that Victorino's unrealized business opportunities amounted to P400,000.00.[58] Being a witness for Victorino's heirs and standing to gain from the contract's fulfillment, Aligada's testimony is self-serving. It is also hearsay. We fail to see how this "evidence" proves actual damages with a "reasonable degree of certainty." [59] If proof is "flimsy", we cannot award actual damages.[60]

WHEREFORE, we AFFIRM the decision of the Court of Appeals promulgated on October 11, 1995, in CA-G. R. CV No. 34952, dismissing the complaint.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1] Under Rule 45 of the 1964 Revised Rules of Court.

[2] In CA-G. R. CV No. 34952, promulgated on October 4, 1995, Justice Corona Ibay-Somera, ponente, concurred in by Justices Nathanael P. de Pano, Jr. and Celia Lipanan-Reyes,+ sitting as Special Eleventh Division.

[3] In Civil Case No. 17827, dated July 12, 1991, Judge Salvador S. Abad Santos, presiding. The decision was actually signed by Judge Cecilio F. Balagot, as "assisting judge" citing Supreme Court Adm. Order No. 65, dated September 25, 1989 (Rollo, p. 94) as basis for his authority to sign (Rollo, p. 111

- [4] Regional Trial Court Record, p. 360.
- [5] Ibid., p. 310.
- [6] Ibid., pp. 321-337.
- [7] The radio frequency to be assigned by Subic Naval Base.
- [8] Regional Trial Court Record, pp. 9-10.
- [9] Regional Trial Court Record, p. 338.
- [10] Ibid., pp. 377-378.
- [11] Ibid., p. 11.
- [12] 34.2 MHz.
- [13] Regional Trial Court Record, p. 12.
- [14] Ibid., p. 13.
- [15] Ibid., p. 14.
- [16] Ibid., p. 150.
- [17] Regional Trial Court Record, p. 15.
- [18] Through the Radio Regulation Office.
- [19] As per the un rebutted testimony of Guerrero, it was Aligada and Victorino who had the responsibility of securing the required Letter of Credit from the Central Bank (Regional Trial Court Record, p. 369).
- [20] Regional Trial Court Record, pp. 373-374.
- [21] Ibid., pp. 1-8.
- [22] Ibid., pp. 18-20.
- [23] Through then presiding Judge Leo D. Medialdea.
- [24] Regional Trial Court Record, p. 26.
- [25] Ibid., pp. 27-33.
- [26] G.R. No. L-37120, 121 SCRA 418 (1983), Justice Venicio Escolin, ponente, concurred in by Justices Felix V. Makasiar, Hermogenes Concepcion, Jr., Juvenal K. Guerrero, and Vicente Abad Santos. Justice Ramon C. Aquino was on leave and Justice Pacifico P. De Castro had no part (Second Division).
- [27] Regional Trial Court Record, p. 106.
- [28] Through presiding Judge Rosario R. Veloso.
- [29] Regional Trial Court Record, p. 107.
- [30] Ibid., pp. 114-116.
- [31] Regional Trial Court Record, p. 120.
- [32] Rollo, p. 111.

[33] Docketed as CA-G.R. CV No. 34952.

[34] Rollo, p. 23.

[35] Rollo, p. 33.

[36] Rollo, p. 25.

[37] Filed on April 26, 1996. On February 10, 1997, we resolved to give due course to the petition (Rollo, p. 177).

[38] Black's Law dictionary, Abridged Fifth Edition, p. 170.

[39] Rollo, p. 56.

[40] Rollo, pp. 56-57.

[41] Adm. Circular No. 4.

[42] A "license" is a right or permission granted by some competent authority to carry on a business or to do an act which, without such license, would be illegal (Corona v. United Harbor Pilots Association of the Philippines, 283 SCRA 31 [1997]).

[43] Art. 1347 of the Civil Code of the Philippines provides, "all things which are not outside the commerce of men, including future things may be the object of the contract. All rights which are not intransmissible may also be the object of contracts....xxx"

[44] Regional Trial Court Record, p. 371.

[45] Ibid., p. 372.

[46] Article 1267, Civil Code of the Philippines.

[47] Claiming unrealized profits in the amount of P52,393.89, heirs of Victorino bank on Article 2201 of the civil Code and aver that Guerrero acted in bad faith.

[48] Ford Philippines, Inc. v. Court of Appeals, 267 SCRA 320, 328 (1997); Priscilla L. Tan v. Northwest Airlines, Inc. G.R. No. 135802, March 3, 2000.

[49] Regional Trial Court Record, p. 430.

[50] AFP Mutual Benefit Association, Inc. v. Court of Appeals, G.R. Nos. 104769-135016, March 3, 2000.

[51] Far East Bank and Trust Company v. Court of Appeals, 241 SCRA 671 (1995); Go v. Court of Appeals, 272 SCRA 752 (1997).

[52] Philippine Air Lines v. Miano, 242 SCRA 235 (1995).

[53] Integrated Packaging Corp. v. Court of Appeals, G.R. No. 115117, June 8, 2000.

[54] Scott Consultants & Resource Development Corporation, Inc. v. Court of Appeals, 242 SCRA 393 (1995); Kierulf v. Court of Appeals, 269 SCRA 433 (1997).

[55] Bernardo v. Court of Appeals (Special Sixth division), 275 SCRA 413 (1997).

[56] People of the Philippines v. Carlito Ereno, G.R. No. 124706, February 22, 2000.

[57] Aligada testified that, "In the usual course of events, Mr. Magat could have expected to net approximately ten per cent of that amount (contract price of \$77,809.19) or \$7,780.00 as his profits from that transaction alone.

(Regional Trial Court Record, p. 152)."

[58] *Supra*, Regional Trial Court Record, p. 152.

[59] *Del Mundo v. Court of Appeals*, 240 SCRA 348 (1995).

[60] *Sulpicio Lines, Inc. v. Court of Appeals*, 246 SCRA 376 (1995); *Central Bank of the Philippines v. Spouses Alfonso*, G.R. No. 131074, March 27, 2000.

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