PACSPORTS PHILS., INC., PETITIONER, VS. NICCOLO SPORTS, INC., RESPONDENT.

G.R. No. 141602. November 22, 2001

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Petition for review on certiorari of the Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 52666, "Niccolo Sports, Inc. vs. Hon. Manuel D. Victorino and Pacsports Phils., Inc." promulgated on December 6, 1999 and January 17, 2000.

Pacsports Phils., Inc. (PPI), petitioner, is the exclusive distributor in the Philippines of sports products manufactured by Bridgestone Sports Company of Japan and Cross Creek International of the United States.

On April 28, 1998, petitioner PPI and Niccolo Sports, Inc. (NSI), respondent, entered into two (2) separate Exclusive Retail Agreements by virtue of which petitioner supplied respondent, on consignment basis, assorted Bridgestone and Cross Creek golf products to be sold by the latter in its outlet situated at the Second Level, Shangri-La Plaza Shopping Mall, Edsa corner Shaw Boulevard, Mandaluyong City. The agreements contain, among others, the following similarly worded stipulations:

> "8. PAYMENTS
>
> a)
>
> NSI shall remit full payment, in Cash or Check, the Outlet's Gross Sales for the Month less NSI's margin on or before fifteen (15) days of the following month. Late Payments shall have the prior approval of PPI;
>
> b)
>
> The supply of all the products in the Retail Outlet is on a Consignment basis.
>
> x x x
>
> "11. TERM
>
> This Agreement shall take effect from the Commencement Date and shall continue to be enforced for a period of three (3) years and shall be automatically renewed by mutual written agreement.
>
> x x x
>
> "12. TERMINATION
>
> a)
>
> PPI shall have the right at any time to terminate this Agreement and repossess unpaid stock and display materials forthwith upon the occurrence of any of the following:

> If NSI is in material breach of the terms and conditions of this Agreement and shall have failed to remedy such breach within sixty (60) days after being requested to do so by PPI; or
>
> x x x
>
> b)
>
> NSI shall have the right at any time to terminate this Agreement and shall be entitled to the reimbursement of all expenses during the operations of the Retail Outlet, including construction and/or renovation forthwith upon the occurrence of any of the following:
>
> If PPI is in material breach of any of the terms and conditions of this Agreement and shall have failed to remedy such breach within (60) days after being requested to do so by NSI; or
>
> x x x"

Petitioner PPI claims that after months of operation, respondent's obligations to it amounted to about P1.5 Million. Despite demand, respondent failed to pay and eventually, it pre-terminated the contracts. This prompted petitioner to file, on January 28, 1999, with the Regional Trial Court, Branch 141, Makati City, Civil Case No. 99-221 for damages with application for a writ of replevin against respondent alleging, inter alia:

> "4.04. On 26 January 1999, without any legal nor contractual basis, NSI unilaterally terminated the Agreements (Annexes 'B' and 'C') effective immediately. Hereto attached and made integral part hereof as Annex "D" is a copy of NSI notice of termination.
>
> "4.05. As a lame excuse for such unilateral termination, NSI cited supposed contractual violations committed by Pacsports - which, even if hypothetically admitted, do not constitute the 'material breach' contemplated in the Agreements (Annexes 'B' and 'C').
>
> "4.06. Worse, despite actual knowledge that the subject properties are merely on consignment basis, NSI unjustly detained them and refused to allow Pacsports to retrieve the unsold inventory unless Pacsports pays the amount of P12,442,500.00 - a condition which cannot be read in any of the provision of the Agreements (Annexes 'B' and 'C') nor in any statutory or case law.
>
> "4.07. To insure that Pacsports will not be able to retrieve its unsold inventory, NSI instructed the Shangri-La management not to allow the removal of any of merchandize from the mall premises without its written authorization. A security guard was likewise deployed by NSI for such purpose. In this regard, attached hereto as Annex 'E' is a copy of NSI letter-instruction."

On the same day, the Makati RTC issued an order granting petitioner's application for a writ of replevin. However, petitioner did not pursue the implementation of this writ because respondent concealed the golf equipment to be seized. Instead, on February 26, 1999, petitioner applied for the issuance of a writ of preliminary injunction to compel respondent to turn over to petitioner the golf equipment and sales proceeds amounting to P1,186,468.65.

For its part, respondent NSI, on February 16, 1999, filed with the Regional Trial Court, Branch 91, Quezon City, Civil Case No. Q-99-36797 for "Breach and Confirmation of Termination of Contracts and Damages" against petitioner. The complaint alleges, among others, that:

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x x x

"9. In flagrant breach, however, of the agreements and with incipient deceit and evident bad faith, defendant, on four (4) occasions, knowingly, deliberately and wantonly intercepted potential customers of plaintiff for some of the products, thereafter surreptitiously pursued them and closed for itself the sales for the particular products sought. In three (3) of these four (4) incidents defendants brazenly resorted to underselling to plaintiff's undue damage and prejudice;

x x x

"10. The fourth incident being the last straw as it were, plaintiff forthwith sent defendant a second letter dated 25 January 1999 which defendant received again through its General Manager, Mr. Rafael Mapua recalling the above-narrated incidents of blatant usurpation of potential customers of plaintiff and fraudulently underselling it in material breach of the agreements; giving notice of the termination of the agreements effective immediately, conformably to paragraph 12 (b) thereof; as well as offering three (3) options to defendant for the amicable settlement of the matter. A copy of this letter-complaint cum notice of termination is attached hereto as Annex 'E'.

"14. Hence, plaintiff was constrained as it was to bring the instant complaint. During the interim, plaintiff will continue to retain in pledge and withhold the remittance to defendant of its portion of the proceeds of the sales for the period December 01, 1998 to February 14, 1999 in the amount of P1,305,865.94 and the return of the remaining inventory of the products defendants had consigned to it, plaintiff being authorized to do so as defendant's commission agent under and by virtue of Articles 1912, 1913 and 1914 of the Civil Code."

On January 29, 1999, respondent NSI, citing the pendency of the Quezon City case, filed with the Makati RTC a motion to dismiss or suspend the proceedings in Civil Case No. 99-221.

Thereupon, petitioner PPI also filed with the Quezon City RTC a motion to dismiss Civil Case No. Q-99-36797 on the ground of pendency of the Makati City case.

On April 20, 1999, the Makati RTC issued an order denying respondent's motion to dismiss. In the same order, the Makati Court granted petitioner's application for a writ of preliminary mandatory injunction. Respondent filed a motion for reconsideration but was denied on May 6, 1999.

Meanwhile, the Quezon City RTC has not resolved petitioner's motion to dismiss.

Then, in a petition for certiorari and prohibition, respondent NSI questioned the orders of the Makati RTC dated April 20, 1999 and May 6, 1999 before the Court of Appeals in CA-G.R. SP No. 52666.

On December 6, 1999, the Court of Appeals promulgated a Decision, the dispositive portion of which reads:

"WHEREFORE, the petition is hereby GRANTED. The impugned Orders dated January 29, 1999 and May 6, 1999 of the respondent Judge are REVERSED and SET ASIDE. Respondent Judge is hereby directed to dismiss Civil Case No. 99-221, entitled: "Pacsports Phils., Inc. vs. Niccolo Sports, Inc. without prejudice to private respondent interposing its claim before the Quezon City case.

"SO ORDERED."

On January 17, 2000, the Court of Appeals denied petitioner's motion for reconsideration.

Hence, this petition.

The petition involves two (2) basic issues, to wit:

1) Which of the two cases should be dismissed by reason of litis pendentia - the Makati City case which was

filed earlier or the Quezon City case which was filed later; and

2) Whether the order of the Makati RTC dated April 20, 1999 granting petitioner's application for a writ of preliminary mandatory injunction was issued with grave abuse of discretion.

As to the first issue, the parties concede that the Makati City case and the Quezon City case involve the same parties, rights asserted and reliefs prayed for, being founded on the same facts; and that judgment in one would constitute res judicata on the other. Because of the concurrence of these similarities, petitioner and respondent sought the abatement of each other's suit on the ground of litis pendentia.

The firmly established rule[1] is that one of two actions will be dismissed on ground of litis pendentia if the following requisites concur: (a) identity of parties, or at least such as representing the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity in the two (2) cases should be such that judgment in one would amount to res judicata in the other.

Undisputably, the parties in the Makati case and the Quezon City case are the same. Petitioner is the plaintiff in the Makati case and the defendant in the Quezon City case; and respondent is the defendant in the Makati case and the plaintiff in the Quezon City case.

The rights asserted and the reliefs prayed for by petitioner in the Makati City case and the rights asserted and the reliefs prayed for by respondent in the Quezon City case are all based on the validity of the pre-termination of the Exclusive Retail Agreements.

In view of those similarities in the two actions, a final judgment on the merits in one would be a bar against the other on the ground of res judicata.

This Court held in several cases[2] that when the elements of litis pendentia exist, the action filed later should be abated to avoid multiplicity of suits. This is based on the maxim Qui prior est tempore, potior est jure (He who is before in time is the better in right). This is the general rule.

In ordering the dismissal of the Makati City case filed earlier than the Quezon City case, the Court of Appeals deviated from the said general rule.

The Court of Appeals gave the following reasons why it ruled that the Quezon City RTC is in a better position to hear the case before it.

- Both actions arose from the two (2) Exclusive Retail Agreements entered into by the parties, and the asserted rights are founded on an identical set of facts;

- There is a claim of breach of the said Agreements by one of the parties against the other; and

- The Quezon City case involves a broader scope of inquiry as it goes to the pith of the controversy, which is the pre-termination of the agreement.

The Court of Appeals correctly observed that: (1) both actions arose from the two (2) Exclusive Retail Agreements entered into by the parties, and the asserted rights are founded on an identical set of facts; and (2) there is a claim of breach of the said Agreements by one of the parties against the other. However, we can not go along with the Court of Appeals in concluding that the Quezon City case "involves a broader scope of inquiry" than the Makati case. The Appellate Court did not explain why the Quezon City case is broader in scope than the Makati case. In fact, it did not point out the issues in the Quezon City case that are not involved in the Makati case. It bears stressing that the only basic issue between the parties in both cases is whether the pre-termination of the agreements is valid as claimed by respondent or invalid as claimed by petitioner. As crafted, the complaints

differ from each other in some details but such details are mere incidents to the basic issue of the validity of the pre-termination of the exclusive retail agreements. Clearly, the Quezon City RTC's deviation from the general rule can not be sustained on the ground that the case before it involves a broader scope of inquiry.

Neither should the Makati City case be dismissed on the ground that it is anticipatory as maintained by respondent, in its comment, citing Teodoro, Jr. vs. Mirasol.[3] Respondent's invocation of this case is misplaced. Here, the basis for dismissing the first action for declaratory relief is not because it was filed in anticipation of the ejectment case but because the first action was improper and there was no cause of action against the defendant. In fact, it was an unmeritorious and vexatious action. Upon the other hand, the second action for unlawful detainer is decidedly the more appropriate action.

We thus hold that the Makati City case must be reinstated and that the Quezon City case must be dismissed.

There is another reason why the Quezon City case should be the one abated. The Makati RTC has commenced proceedings in the case by issuing a writ of replevin and later, an order granting, after hearing, petitioner's application for a writ of preliminary mandatory injunction.

We now proceed to the next issue: whether the Makati RTC acted with grave abuse of discretion in issuing the order of April 20, 1999.

It is a long settled rule[4] that for a writ of preliminary mandatory injunction to issue, the following requisites must be present: (1) that the complainant has a clear legal right; (2) that his right has been violated and the invasion is material and substantial; and (3) there is an urgent and permanent necessity for the writ to prevent serious damage. Equally settled[5] is that, as a rule, injunction will not be granted to take property out of the possession or control of one party and place it into that of another whose title has not clearly been established by law.

The Makati RTC granted petitioner's application for a writ of preliminary mandatory injunction on the basis of its findings, enumerated hereunder, which are not disputed:

> - The exclusive retail agreements between the parties was pre-terminated by the respondent unilaterally on January 25, 1999;
>
> - Respondent is withholding petitioner's golf equipment, accessories and apparel worth P12,377,525.00, as of January 25, 1999, and proceeds from sale in the amount of P1,288,499.84; and
>
> - The market value of the golf equipment, accessories and apparel being withheld by respondent depreciates easily due to rapid changes in style or model.

The Makati RTC required petitioner to post a bond for the issuance of the writ of preliminary mandatory injunction in the amount of P13,980,090.00 to answer for any damage that respondent may suffer by virtue of the writ should the court finally adjudge that petitioner is not entitled thereto.

There is no question that petitioner, as owner of the items being withheld by respondent, is entitled to possession thereof. Respondent's refusal to deliver them to petitioner is a breach of that right. Its claim for reimbursement and retention of the items in pledge under Articles 1912, 1913 and 1914 of the Civil Code[6] are being disputed by petitioner. Actually, respondent's claims are not clearly established but yet to be resolved. Secondly, in light of the bond posted by petitioner which would guaranty payment of respondent's claims if found meritorious, respondent has lost its basis for withholding the disputed items and money as security. Finally, by their nature, the golf equipment, accessories and apparel may not be kept in storage indefinitely or until the dispute between the parties is finally resolved without impairing their market value which would prejudice the petitioner as owner.

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We thus rule that the Court of Appeals erred in finding that the Makati RTC, in denying respondent's motion to dismiss the complaint in Civil Case No. 99-221 and in issuing the writ of preliminary mandatory injunction, acted with grave abuse of discretion.

WHEREFORE, the petition is hereby GRANTED. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 52666 are REVERSED. The order dated April 20, 1999 of the Regional Trial Court of Makati, Branch 141, in Civil Case No. 99-221 denying respondent's motion to dismiss the complaint and order dated May 6, 1999 granting the writ of preliminary injunction are AFFIRMED. Civil Case No. Q-99-36797 of the Regional Trial Court, Branch 91, Quezon City, is ordered dismissed, without prejudice to respondent Niccolo Sports, Inc. pursuing its claims before the Makati RTC, Branch 141 in Civil Case No. 99-221. Costs against respondent.

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

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[1] Cebu International Finance Corp. vs. Court of Appeals, 316 SCRA 488 (1999); Ramos vs. Peralta, 203 SCRA 412 (1991); Yu vs. Court of Appeals, 232 SCRA 594 (1994); Cokaliong Shipping Lines, Inc. vs. Amin, 260 SCRA 122 (1996); Valencia vs. Court of Appeals, 263 SCRA 275 (1996).

[2] Sanpiro Finace Corporation vs. Intermediate Appellate Court, 220 SCRA 527 (1993); Victronics Computers, Inc. vs. Logarta, 217 SCRA 517 (1993); Vda. De Tolentino vs. De Guzman, 172 SCRA 555 (1989); Investors Fianace Corporation vs. Ebarle, 163 SCRA 61 (1998); Arceo vs. Oliveros, 164 SCRA 308 (1985); Lamis Ents. V. Lagamon, 108 SCRA 746 (1981); Sta. Ana vs. Narvades, 30 SCRA 454 (1969); Pampanga Bus Company, Inc. vs. Ocfemia, 18 SCRA 407 (1966); Del Rosario vs. Jacinto, 15 SCRA 15 (1968).

[3] 99 Phil. 150 (1956).

[4] Prosperity Credit Recourse, Inc. vs. Court of Appeals, 301 SCRA 52 (1999); Delijo vs. Court of Appeals, 117 SCRA 665 (1982); Rivera vs. Florendo, 144 SCRA 643 (1986); Manila Electric Railroad & Light Co. vs. Del Rosario, 22 Phil. 433 (1912); Eusebio vs. Aguas, 47 Phil. 567 (1925).

[5] Heirs of Joaquin Asuncion vs. Gervacio, Jr., 304 SCRA 322 (1999); S & A Gaisano Incorporated vs. Hidalgo. 192 SCRA 224 (1990); Rodulfa vs. Alfonso, 76 Phil. 225 (1946); etc.

[6] Art. 1912. The principal must advance to the agent, should the latter so request, the sums necessary for the execution of the agency.

Should the agent have advanced them, the principal must reimburse him therefor, even if the business or undertaking was not successful, provided the agent is free from all fault.

Art. 1913. The principal must also indemnify the agent for all the damages which the execution of the agency may have cause the latter, without fault or negligence on his part.

Art. 1914. The agent may retain in pledge the things which are the object of the agency until the principal effects the reimbursement and pays the indemnity set forth in the two preceding articles.

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