

DART PHILIPPINES, INC., PETITIONER, VS. SPOUSES FRANCISCO AND ERLINDA CALOGCOG, RESPONDENTS.

G.R. No. 149241. August 24, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

Petitioner assails in this Rule 45 petition the February 28, 2001 Decision[1] and the July 30, 2001 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV. No. 52474. The facts and proceedings that led to the filing of the instant petition are pertinently narrated below.

Engaged in the business of manufacturing or importing into the Philippines Tupperware products and marketing the same under a direct selling distribution system,[3] petitioner entered into a Distributorship Agreement with respondents on March 3, 1986.[4] The agreement was to expire on March 31, 1987 but was subject to an automatic renewal clause for two one-year terms.[5] On April 1, 1991, the parties again executed another Distributorship Agreement[6] which was to expire on March 31, 1992 but renewable on a yearly basis upon terms and conditions mutually agreed upon in writing by the parties.[7]

Following the expiration of the agreement, petitioner, on April 30, 1992, informed respondents that, due to the latter's several violations thereof, it would no longer renew the same.[8] Respondents then made a handwritten promise for them to observe and comply with the terms and conditions thereof.[9] This convinced petitioner to extend, on July 24, 1992, the period of the distributorship up to September 30, 1992.[10]

In the meantime, on July 2, 1992, petitioner subjected respondents' account to an audit review.[11] In September 1992, petitioner informed respondents that it had engaged the services of an auditing firm and that it was again subjecting respondents' account to an audit review.[12] Objecting to the second audit,[13] respondents disallowed the auditing firm from inspecting their books and records. As a result, petitioner only accepted respondents' purchase orders on pre-paid basis.[14]

On September 29, 1992, a day before the expiry of the Distributorship Agreement, respondents filed before the Regional Trial Court (RTC) of Pasig City a Complaint for damages with application for a writ of injunction and/or restraining order docketed as Civil Case No. 62444.[15] They alleged that petitioner abused its right when it caused the audit of their account and when it only honored their orders if they were pre-paid, thereby causing damages to them of around P1.3M.[16]

On November 12, 1992, the trial court issued a writ of preliminary injunction and directed petitioner to observe the terms and conditions of the Distributorship Agreement and to honor, deliver and fulfill its obligations in effecting deliveries of Tupperware products to respondents.[17] In the subsequent certiorari proceedings before the appellate court docketed as CA-G.R. SP No. 29560, the CA ruled that the Distributorship Agreement already expired; thus, the trial court committed grave abuse of discretion in granting the writ of preliminary injunction which had the effect of enforcing a contract that had long expired.[18]

Respondents then moved before the trial court, on June 14, 1993, for the admission of their Supplemental Complaint,[19] in which they alleged that petitioner refused to award benefits to the members of respondents' sales force and coerced the said members to transfer to another distributor; that petitioner refused to comply with Sections 8 and 9[20] of the Distributorship Agreement by not paying respondents the value of the products on hand and in their custody, and by not effecting the transfer of their good will to the absorbing distributor; and that petitioner, by its actions which resulted in the loss of respondents' sales force, had made inutile respondents' investment in their building. Respondents thus prayed for additional actual damages, specifically P4,495,000.00 for the good will, P1M for the products on hand, and P3M for the cost of the building.

Expectedly, petitioner opposed the admission of the supplemental complaint.[21] Amid the protestations of petitioner, the trial court admitted the supplemental complaint[22] and ordered the former to file its supplemental answer.[23]

After trial on the merits, the RTC rendered its Decision[24] on November 27, 1995. It ruled, among others, that the second audit was unreasonable and was only made to harass respondents; that the shift from credit to pre-paid basis in the purchase orders of respondents was another act of harassment; that petitioner had no valid reason to refuse the renewal of the distributorship agreement; and that petitioner abused its rights under the said agreement. It then concluded that because of petitioner's unjustified acts, respondents suffered damages, among which were the salaries paid to the internal auditors during the first audit, the good will money, the value of the warehouse, moral and exemplary damages, and attorney's fees. The dispositive portion of the RTC decision reads:

WHEREFORE, judgment is hereby rendered dismissing for lack of merit [respondents'] claims for payment of items subject of credit memoranda, and for products alleged to be on hand at the termination of the [distributorship] agreement. On [respondents'] other claims, judgment is hereby rendered, as follows:

- Ordering the [petitioner] to pay [respondents] the amount of P23,500.17 representing the salaries of internal auditors engaged by the [petitioner] to conduct an audit on [respondents'] financial records;
- Ordering the [petitioner] to pay [respondents] the sum of P4,495,000.00 representing "goodwill" money which [respondents] failed to realize;
- Ordering the [petitioner] to pay [respondents] the sum of P1,000,000.00 as reasonable compensation to the [respondents] for acquiring a lot and constructing thereon a structure to serve as storage, assembly place and warehouse for [petitioner's] products;
- Ordering the [petitioner] to pay [respondents] the sum of P500,000.00 as moral damages and another P500,000.00 as and by way of exemplary damages; and
- Ordering the [petitioner] to pay [respondents] the sum of P100,000.00 as attorney's fees, plus P2,000.00 per Court appearance.

[Petitioner's] counterclaims are hereby dismissed for lack of merit.

Costs against the [petitioner].

SO ORDERED.[25]

Aggrieved, petitioner timely interposed its appeal. In the assailed February 28, 2001 Decision,[26] the appellate court affirmed with modification the ruling of the trial court and disposed of the appeal as follows:

WHEREFORE, in view of the foregoing, the assailed decision of the court a quo is hereby AFFIRMED WITH MODIFICATION, the award for moral damages is hereby REDUCED to P100,000.00 and the award for exemplary damages is hereby REDUCED to P50,000.00. The award of P1,000,000.00 as reasonable

compensation for the acquisition of the lot and construction of the building is hereby DELETED.

SO ORDERED.[27]

Since its motion for reconsideration was subsequently denied by the appellate court in the further assailed July 30, 2001 Resolution,[28] petitioner instituted the instant petition for review on certiorari, raising the following grounds:

- The Court of Appeals committed an error in affirming the decision of the trial court admitting the supplemental complaint thereby taking cognizance of the issues raised and rendering judgment thereon.
- The Court of Appeals committed an error in affirming the decision of the trial court holding petitioner liable to pay respondents the "goodwill money" they allegedly failed to realize.
- While petitioner lauds the Court of Appeals' decision deleting the trial court's award of P1,000,000.00 by way of compensation for the alleged acquisition of the lot and construction of the building, and appreciates the reduction of the trial court's awards on the alleged moral damages and exemplary damages, the Court of Appeals still erred in not totally dismissing respondents' claims for damages including attorney's fees.
- The Court of Appeals committed an error in not finding for the petitioner and in not awarding damages in favor of petitioner by way of reasonable attorney's fees.[29]

The primordial issue to be resolved by the Court in the instant case is whether petitioner abused its rights under the distributorship agreement when it conducted an audit of respondents' account, when it accepted respondents' purchase orders only if they were on a pre-paid basis, and when it refused to renew the said distributorship agreement.

Preliminarily, the Court admits that, ordinarily, it will not review the findings of fact made by the appellate court. However, jurisprudence lays down several exceptions, among which are the following which obtain in this case: when the judgment is based on a misapprehension of facts and when the appellate court manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, could justify a different conclusion.[30] Thus, the Court finds it imperative to evaluate, as in fact it had reviewed, the records of the case, including the evidence adduced during the trial, in relation to the arguments of the parties and the applicable law and jurisprudence.

Under Article 19 of the Civil Code, 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. To find the existence of abuse of right under the said article, the following elements must be present: (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.[31] Accordingly, the exercise of a right shall always be in accordance with the purpose for which it has been established, and must not be excessive or unduly harsh--there must be no intention to injure another.[32] A person will be protected only when he acts in the legitimate exercise of his right, that is, when he acts with prudence and in good faith, not when he acts with negligence or abuse.[33]

Malice or bad faith is at the core of Article 19 of the Civil Code. Good faith refers to the state of mind which is manifested by the acts of the individual concerned. It consists of the intention to abstain from taking an unconscionable and unscrupulous advantage of another. It is presumed. Thus, he who alleges bad faith has the duty to prove the same.[34] Bad faith does not simply connote bad judgment or simple negligence; it involves a dishonest purpose or some moral obloquy and conscious doing of a wrong, a breach of known duty due to some motives or interest or ill will that partakes of the nature of fraud. Malice connotes ill will or spite and speaks not in response to duty. It implies an intention to do ulterior and unjustifiable harm. Malice is bad faith or bad

motive.[35]

At the crux of this controversy, therefore, is whether petitioner acted in bad faith or intended to injure respondents when it caused the auditing of the latter's account, when it implemented the pre-paid basis in treating the latter's orders, and when it refused to renew the distributorship agreement.

The Court rules in the negative. We note that in the written correspondence of petitioner to respondents on April 30, 1992 informing the latter of the non-renewal of the distributorship agreement, petitioner already pointed out respondents' violations of the agreement. The letter pertinently reads:

We found that you have committed the following acts which are contrary to provisions of Section 2(f) of our Agreement:

(a) You submitted several "Vanguard Reports" containing false statements of the sales performance of your units. A comparison of the reports you submitted to our office with that actually reported by your managers show that the sales of your units are actually much lower than that reported to Tupperware (Exhibits "G," "H," "I," "J," "L," "O," "P," "Q," and "R.")

(b) The unauthorized alteration of the mechanics of "Nan's Challenge," which is a Tupperware company sponsored promotion campaign. The documentary evidence furnished us, Exhibit "E," shows that the amount of target party averages were increased by you.

(c) Charging the managers for accounts of their dealers and for overdue kits (Exhibits "C" and "D").[36]

The correspondence prompted respondents to make a handwritten promise that they would observe and comply with the terms and conditions of the distributorship agreement.[37] This promise notwithstanding, petitioner was not barred from exercising its right in the agreement to conduct an audit review of respondents' account. Thus, an audit was made in July 1992. In September 1992, petitioner informed respondents that it was causing the conduct of a second audit review. And as explained in petitioner's September 11, 1992 correspondence to respondents, the second audit was intended to cover the period not subject of the initial audit (the period prior to January 1 to June 30, 1992, and the period from July 1, 1992 to September 1992).[38] Because respondents objected to the second audit, petitioner exercised its option under the agreement to vary the manner in which orders are processed--this time, instead of the usual credit arrangement, petitioner only admitted respondents' purchase orders on pre-paid basis. It may be noted that petitioner still processed respondents' orders and that the pre-paid basis was only implemented during the last month of the agreement, in September 1992. With the expiry of the distributorship agreement on September 30, 1992, petitioner no longer acceded to a renewal of the same.

From these facts, we find that bad faith cannot be attributed to the acts of petitioner. Petitioner's exercise of its rights under the agreement to conduct an audit, to vary the manner of processing purchase orders, and to refuse the renewal of the agreement was supported by legitimate reasons, principally, to protect its own business. The exercise of its rights was not impelled by any evil motive designed, whimsically and capriciously, to injure or prejudice respondents. The rights exercised were all in accord with the terms and conditions of the distributorship agreement, which has the force of law between them.[39] Clearly, petitioner could not be said to have committed an abuse of its rights. It may not be amiss to state at this juncture that a complaint based on Article 19 of the Civil Code must necessarily fail if it has nothing to support it but innuendos and conjectures.[40]

Given that petitioner has not abused its rights, it should not be held liable for any of the damages sustained by respondents. The law affords no remedy for damages resulting from an act which does not amount to a legal wrong. Situations like this have been appropriately denominated *damnum absque injuria*. [41] To this end, the Court reverses and sets aside the trial and appellate courts' rulings. Nevertheless, the Court sustains the trial court's order for the reimbursement by petitioner to respondents of P23,500.17, with 12% interest per annum,

computed from the filing of the original complaint up to actual payment, representing the salaries of the internal auditors, because, first, the award was never questioned by petitioner, and second, petitioner was the one which engaged the services of the auditors.

As regards petitioner's claim for attorney's fees, the Court cannot grant the same. We emphasized in prior cases that no premium should be placed on the right to litigate. Attorney's fees are not to be awarded every time a party wins a suit. Even when a claimant is compelled to litigate or to incur expenses to protect his rights, still attorney's fees may not be awarded where there is no sufficient showing of bad faith in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.[42]

With the above disquisition, the Court finds no compelling reason to resolve the other issues raised in the petition.

WHEREFORE, premises considered, the petition is GRANTED. The decisions of the Regional Trial Court of Pasig City in Civil Case No. 62444 and of the Court of Appeals in CA-G.R. CV. No. 52474 are REVERSED and SET ASIDE. Petitioner is ORDERED to pay respondents P23,500.17 with interest at 12% per annum computed from the date of filing of the original complaint.

SO ORDERED.

Chico-Nazario,[**] (Acting Chairperson), Velasco, Jr., and Peralta, JJ., concur.
Carpio Morales, J.,[*] please see concurring & dissenting opinion.

[*] Additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 679 dated August 3, 2009.

[**] In lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 678 dated August 3, 2009.

[1] Penned by Associate Justice Perlita J. Tria Tirona, with Associate Justices Eugenio S. Labitoria and Eloy R. Bello, Jr., concurring; rollo, pp. 56-76.

[2] Id. at 33.

[3] Rollo, p. 9.

[4] Records, p. 116.

[5] Id. at 125. The March 3, 1986 Distributorship Agreement contains the following provision:

Section 7. Unless otherwise terminated, the term of this Distributorship Agreement shall be for a period beginning on the date first above written and ending on March 31, 1987 and shall be automatically renewed for two additional one (1) year terms subject to the right of the DISTRIBUTOR or SELLER to terminate this Agreement at the date of expiration of the initial period or at the end of each of the one-year renewals upon written notice to the other party at least sixty (60) days prior to such date of expiration. After the expiration of the initial term and the automatic two one (1) year term renewals thereof, the Agreement may be renewed upon such terms and conditions as may be mutually agreed upon by the parties.

[6] Id. at 88-97.

[7] Id. at 65. The April 1, 1991 Distributorship Agreement contains the following provision:

Section 6. Unless otherwise terminated, the term of this Distributorship Agreement shall be for a one year period beginning on the date first above written and ending on March 31, 1992, and may be renewed on a yearly basis

upon terms and conditions mutually agreed to in writing between the parties and provided that DISTRIBUTOR proves to the SELLER's satisfaction that it has faithfully complied with the original terms and conditions of this Agreement and that it has conducted its business in accordance with agreed policies, guidelines, rules and regulations such as but not limited to those which are in the TUPPERWARE KNOW HOW Guide, TUPPERWARE Demonstration Guide, TUPPERWARE Distributors Manual and other written communications, and furthermore, that it has conducted its affairs in a manner which protects or does not detract from the SELLER's business image and reputation for fair dealings with those related to it, either as a constituent of the sales force or as part of the consuming public.

[8] Id. at 98-99.

[9] Id. at 100.

[10] Id. at 86. The July 24, 1992 Agreement of the parties pertinently reads:

WHEREAS, the parties hereto entered into an AGREEMENT dated April 1, 1991 and acknowledged before Notary Public Simeon G. Hildawa as Doc. No. 279, Page No. 57, Book No. I, Series of 1991, copy of which is hereto attached and made an integral part hereof as Annex "A";

WHEREAS, by express provision of Section 6 of the said AGREEMENT, the term thereof had expired on March 31, 1992;

NOW, THEREFORE, PREMISES CONSIDERED, the parties hereto hereby agreed to extend the said AGREEMENT upon the same terms and conditions stated therein, except for the period, which period shall end on September 30, 1992, which may however be further extended or renewed upon terms and conditions mutually agreed to in writing between the parties and subject to other conditions stated in the said AGREEMENT.

[11] Id. at 2.

[12] Id. at 57-58.

[13] Id. at 55-56.

[14] Id. at 59.

[15] Id. at 1.

[16] Id. at 3-7.

[17] Id. at 179-181.

[18] Id. at 367. The CA rendered its Decision in CA-G.R. SP No. 29560 on May 28, 1993.

[19] Id. at 376-378.

[20] Sections 8 and 9 of the April 1, 1991 Distributorship Agreement provide:

Section 8. Upon termination of this Distributorship Agreement, any and all the rights and privileges of the DISTRIBUTOR under this Agreement shall be terminated, and DISTRIBUTOR agrees not to make any further sale of "PRODUCTS" or make further use of the aforementioned valid TRADEMARKS or the trading style TUPPERWARE HOME PARTIES. However, as to bonafide orders received by DISTRIBUTOR prior to date of termination (which it agrees upon request to show to SELLER), DISTRIBUTOR agrees to make deliveries of "PRODUCTS" in an orderly and businesslike manner. As to all other "PRODUCTS" on hand at date of termination, DISTRIBUTOR agrees, at SELLER's option, to sell and immediately deliver such "PRODUCTS" to

seller. SELLER agrees to pay DISTRIBUTOR the parties originally paid by DISTRIBUTOR less any indebtedness, including interest, which DISTRIBUTOR owes to SELLER.

Upon termination of this Agreement, DISTRIBUTOR will immediately discontinue all uses of SELLER's TRADEMARK, copyrighted materials, trade names and trading styles, and will make or cause to be made such changes in signs and buildings, vehicles, etc. and redeliver such printed materials on hand as SELLER may direct in order to effectuate such discontinuance.

Section 9. The termination of a Distributorship Agreement under Sec. 8 hereinabove notwithstanding, the SELLER recognizes the right of distributors who have terminated their agreements with the SELLER after having faithfully complied with their rights and obligations during the life of the agreement, to the benefit of, or the enhancement of the image of the SELLER and the "PRODUCTS," to enter into agreements selling or transferring their "goodwill" to an INCOMING DISTRIBUTOR to whom the SELLER is willing to grant a new DISTRIBUTORSHIP AGREEMENT under such terms and conditions mutually agreed upon by the SELLER and the INCOMING DISTRIBUTOR; provided, that the agreement selling or transferring the "goodwill" between the OUTGOING DISTRIBUTOR and the INCOMING DISTRIBUTOR, incorporates provisions whereby the OUTGOING DISTRIBUTOR binds itself or himself for a period of three (3) years from the date of the sale or transfer agreement:

(a) Not to engage, directly or indirectly, in any direct selling operation of any product by the party plan system or by any other direct selling method, as distinguished from "shop retailing";

(b) Not to engage[,] directly or indirectly[,] in the sale of any product in competition with the "PRODUCTS" manufactured and/or sold by DART (PHILIPPINES), INC.

(c) Not to act in any manner detrimental to or prejudicial to the value of the "goodwill" and the customer list or dealer sales force transferred by the OUTGOING DISTRIBUTOR to the INCOMING DISTRIBUTOR, and

that the OUTGOING DISTRIBUTOR binds itself or himself to strictly comply with the foregoing and to answer for any damages caused by the breach of the provisions of this paragraph, as well as to pay for all expenses which may be incurred by the INCOMING DISTRIBUTOR and/or DART (PHILIPPINES), INC. in the event legal or any other action becomes necessary in order to enforce this paragraph. (Id. at 94-95).

[21] Id. at 379-384.

[22] Id. at 406-407, 427.

[23] Id. at 430, 434-437.

[24] Id. at 624-641.

[25] Id. at 641.

[26] Supra note 1.

[27] Rollo, pp. 75-76.

[28] Supra note 2.

[29] Rollo, pp. 12-13.

[30] Doles v. Angeles, G.R. No. 149353, June 26, 2006, 492 SCRA 607, 615-616.

[31] BPI Express Card Corporation v. Court of Appeals, 357 Phil. 262, 275 (1998).

- [32] Heirs of Purisima Nala v. Cabansag, G.R. No. 161188, June 13, 2008, 554 SCRA 437, 442-443.
- [33] National Power Corporation v. Philipp Brothers Oceanic, Inc., 421 Phil. 532, 547 (2001).
- [34] Development Bank of the Philippines v. Court of Appeals, G.R. No. 137916, December 8, 2004, 445 SCRA 500, 518.
- [35] Saber v. Court of Appeals, G.R. No. 132981, August 31, 2004, 437 SCRA 259, 278-279.
- [36] Records, p. 98.
- [37] Supra note 9.
- [38] Records, p. 52.
- [39] Barons Marketing Corporation v. Court of Appeals, G.R. No. 126486, February 9, 1998, 286 SCRA 96, 106.
- [40] Nikko Hotel Manila Garden v. Reyes, G.R. No. 154259, February 28, 2005, 452 SCRA 532, 548.
- [41] BPI Express Card Corporation v. Court of Appeals, supra note 31, at 276.
- [42] ABS-CBN Broadcasting Corporation v. Court of Appeals, 361 Phil. 499, 529 (1999).

CONCURRING AND DISSENTING OPINION

CARPIO MORALES, J.:

I concur with the ponencia with respect to the reimbursement of payment of professional fees in favor of respondent spouses. However, I dissent with respect to the imposition of 12% interest per annum on the reimbursable amount which the ponencia regards as "com[ing] in the nature of a forbearance of money."

"Forbearance," in the context of the usury law, is a contractual obligation of lender or creditor to refrain, during a given period of time, from requiring the borrower or debtor to repay a loan or debt then due and payable.[1] With this standard, the obligation in this case is not a forbearance of money.

In similar or analogous cases involving reimbursements or refunds, the interest of 6% per annum was imposed, viz: Heirs of Aguilar-Reyes v. Spouses Mijares,[2] JL Invesetment & Development v. Tendon Phils.,[3] Spouses Alinas v. Spouses Alinas[4] and ICTSI v. FGU Insurance.[5]

I thus submit that the proper interest to be imposed on the reimbursable amount is 6% per annum from the time of judicial demand to the finality of the decision, and 12% per annum from the finality of the decision until full satisfaction, conformably with Eastern Shipping Lines v. Court of Appeals.[6]

WHEREFORE, I concur with the ponencia insofar as it reverses the appealed decision, but I dissent with respect to the rate of interest to be imposed on the judgment award in light of my foregoing submission.

[1] Crismina Garments v. CA, G.R. No. 128721, 356 Phil. 701 (1999).

[2] 457 Phil. 120 (2003).

[3] G.R. No. 148596, January 2, 2007.

[4] G.R. No. 158040, April 14, 2008.

[5] G.R. No. 161539, April 24, 2009.

[6] G.R. No. 97412, 234 SCRA 78 (1994).

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