NESTLE PHILIPPINES, INC., PETITIONER, VS. FY SONS, INCORPORATED, RESPONDENT.

G.R. NO. 150780. May 05, 2006

Ponente: CORONA, J.

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CORONA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 57299 dated January 11, 2001 which in turn affirmed with modification the decision of Branch 57 of the Regional Trial Court (RTC) of Makati City in Civil Case No. 90-3169,[2] as well as the CA's resolution[3] dated November 14, 2001 which denied petitioner's motion for reconsideration.

The antecedent facts follow.

Petitioner is a corporation engaged in the manufacture and distribution of all Nestle products nationwide. Respondent, on the other hand, is a corporation engaged in trading, marketing, selling and distributing food items to restaurants and food service outlets. On December 23, 1998, petitioner and respondent entered into a distributorship agreement (agreement) whereby petitioner would supply its products for respondent to distribute to its food service outlets. A deed of assignment was also executed by respondent in favor of petitioner on December 13, 1988, assigning the time deposit of a certain Calixto Laureano in the amount of P500,000 to secure respondent's credit purchases from petitioner. A special power of attorney was likewise executed by Laureano authorizing the respondent to use the time deposit as collateral.

The areas covered by the agreement were Baguio, Dagupan, Angeles, Bulacan, Pampanga, Urdaneta, La Union, Tarlac and Olongapo. At the end of 1989, the agreement expired and the parties executed a renewal agreement on January 22, 1990. A supplemental agreement was executed on June 27, 1990, to take effect on July 1, 1990.

On July 2, 1990, petitioner fined respondent P20,000 for allegedly selling 50 cases of Krem-Top liquid coffee creamer to Lu Hing Market, a retail outlet in Tarlac. This was purportedly proscribed by the agreement. Respondent paid the fine. In September 1990, Krem-Top liquid coffee creamer was sold to Augustus Bakery and Grocery, an act again allegedly in violation of the agreement. Petitioner imposed a P40,000 fine which respondent refused to pay.

On October 19, 1990, respondent, through counsel, wrote petitioner to complain about the latter's breaches of their agreement and the various acts of bad faith committed by petitioner against respondent. Respondent demanded the payment of damages. In turn, on November 5, 1990, petitioner sent respondent a demand letter and notice of termination, alleging that the latter had outstanding accounts of P995,319.81. When the alleged accounts were not settled, petitioner applied the P500,000 time deposit as partial payment.

Respondent filed a complaint for damages against petitioner, alleging bad faith.[4] According to respondent:

> " [petitioner] made representations and promises of rendering support, including marketing support,

> assignment of representatives by way of assistance in its development efforts, and assurances of income in a marketing area not previously developed. Thus, [respondent] was lured into executing a distributorship agreement with the [petitioner]". [Respondent] thereby invested huge sums of money, time and efforts to abide by such distributorship agreement, and to develop market areas for [petitioner's] products. Thereafter, the [petitioner] breached the distributorship agreement by committing various acts of bad faith such as: failing to provide promotional support; deliberately failing to promptly supply the [respondent] with the stocks for its orders; intentionally diminishing the [respondent's] sales by supporting a non-distributor; and concocting falsified charges to cause the termination of the distributorship agreement without just cause. By such termination, [petitioner] would be able to obtain the market gains made by [respondent] at the latter's own efforts and expenses. When [respondent] complained to [petitioner] about the latter's acts of bad faith, the latter terminated the agreement on the allegation that [respondent] did not pay its accounts. [Petitioner] also seized [respondent's] time deposit collateral without basis; penalized [respondent] with monetary penalty for the concocted charge; and unilaterally suspended the supply of stocks to [respondent].[5]

Respondent sought actual damages of P1,000,000, moral damages of P200,000, exemplary damages of P100,000, attorney's fees of P100,000, plus the return of the P500,000 time deposit and costs of suit. In its answer, petitioner interposed a counterclaim for P495,319.81 representing the balance of respondent's overdue accounts, with interest of 2% per month from the date of default until fully paid, moral damages of P100,000, exemplary damages of P200,000, attorney's fees of P120,000 and costs of suit.

In a decision dated November 10, 1997, the Makati City RTC ruled in favor of the respondent:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the defendant to pay plaintiff the following:
>
> - The amount of P1,000,000.00 as actual damages sustained by the plaintiff by reason of the unwarranted and illegal acts of the defendant in terminating the distributorship agreement;
>
> - The amount of P100,000.00 as exemplary damages;
>
> - The amount of P100,000.00 as attorney's fees;
>
> The plaintiff however, is hereby ordered to pay the defendant the amount of P53,214,26 (sic) which amount has been established as the amount the defendant is entitled from the plaintiff.
>
> Three-fourths costs against the defendant.
>
> SO ORDERED.[6]

Petitioner appealed the decision to the CA. On January 11, 2001, the CA rendered a decision affirming the RTC's decision with modification:

> WHEREFORE, the judgment appealed from is AFFIRMED with the following MODIFICATIONS: (1) the actual damages is INCREASED from P1,000,000.00 to P1,500,000.00;[7] and (2) the amount of P53,214.26 payable by the appellee to the appellant is DELETED.
>
> SO ORDERED.[8]

Both the CA and the RTC found, among others, that petitioner indeed failed to provide support to respondent, its distributor; that petitioner unjustifiably refused to deliver stocks to respondent; that the imposition of the P20,000 fine was void for having no basis; that petitioner failed to prove respondent's alleged outstanding obligation; that petitioner terminated the agreement without sufficient basis in law or equity and in bad faith; and that petitioner should be held liable for damages.

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Hence this petition raising the following grounds:

(1)

THE [CA] COMMITTED A GRAVE ERROR IN LAW WHEN IT RULED THAT: "THE RATIOCINATIONS OF THE APPELLANT AS TO THE APPELLEE'S ALLEGED VIOLATION OF THE CONTRACT ARE THUS WEAK AND UNCONVINCING" AND "THE APPELLEE'S ALLEGED NON-PAYMENT AND OUTSTANDING BALANCE OF P995,319.81 WAS NOT SUFFICIENTLY PROVEN" DESPITE THE FACT THAT FLORENTINO YUE, JR., THE MANAGER OF THE RESPONDENT ADMITTED IN OPEN COURT IN ANSWER TO THE QUESTION OF THEN PRESIDING JUDGE PHINNY C. ARAQUIL THAT THE DISTRIBUTORSHIP AGREEMENT WAS TERMINATED BY YOUR PETITIONER BECAUSE OF THE UNPAID BALANCE OF THE RESPONDENT OF AROUND P900,000.00.

(2)

THE [CA] COMMITTED A GRAVE ERROR IN LAW IN DISREGARDING THE TESTIMONY OF THE WITNESS FOR THE PETITIONER, CRISTINA RAYOS WHO PREPARED THE STATEMENT OF ACCOUNT (EXHIBIT 11) ON THE GROUNDS THAT SHE WAS NOT INVOLVED IN THE DELIVERY AS SHE WAS ONLY IN CHARGE OF THE RECORDS AND DOCUMENTS OF ALL ACCOUNTS RECEIVABLES AS PART OF HER DUTIES AS CREDIT AND COLLECTION MANAGER CONSIDERING THAT THE EVIDENCE PRESENTED WAS AN EXCEPTION TO THE HEARSAY RULE UNDER SECTION 45 (SIC), RULE 130, OF THE REVISED RULES ON EVIDENCE.

(3)

THE [CA] COMMITTED A GRAVE ERROR IN LAW IN AWARDING TO THE RESPONDENT ACTUAL DAMAGES IN THE AMOUNT OF P1,000,000.00 AND ORDERING THE REFUND OF THE AMOUNT OF P500,000.00 REPRESENTING THE TIME DEPOSIT OF THE RESPONDENT WHICH WAS ASSIGNED AS SECURITY FOR THE RESPONDENT'S CREDIT LINE BECAUSE THE PETITIONER HAD THE RIGHT TO TERMINATE THE DISTRIBUTORSHIP AGREEMENT UNDER ART. 1191 OF THE CIVIL CODE AND PARAGRAPHS 5 AND 22 OF THE DISTRIBUTORSHIP AGREEMENT BECAUSE OF THE FAILURE OF THE RESPONDENT TO SETTLE ITS ACCOUNT IN THE AMOUNT OF P995,319.81 AND THAT THE EVIDENCE SUBMITTED BY THE RESPONDENT ON THE ALLEGED ACTUAL DAMAGES IT SUSTAINED AS A RESULT OF THE TERMINATION OF THE DISTRIBUTORSHIP AGREEMENT (EXHIBIT 5) AND COMPANION EXHIBITS WERE MERELY SPECULATIVE AND DID NOT HAVE PROBATIVE VALUE.

(4)

THE [CA] COMMITTED A GRAVE ERROR IN LAW FOR NOT AWARDING TO THE PETITIONER ITS COUNTERCLAIM.[9]

On the first issue, petitioner asserts that respondent's witness, Florentino Yue, Jr., a director and officer of respondent corporation, admitted in open court that the respondent had an unpaid obligation to petitioner in the amount of "around P900,000."[10]

Respondent counters that this statement was merely in answer to the question of the presiding judge on what ground petitioner supposedly terminated the agreement. The witness was not being asked, nor was he addressing, the truth of such ground. In fact, this witness later testified that "(petitioner) wrote us back saying that they (had) terminated my contract and that I owe(d) them something like P900,000."[11]

Petitioner's argument is palpably without merit and deserves scant consideration. It quoted Mr. Yue's statement in

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isolation from the rest of his testimony and took it out of context. Obviously, Yue's statement cannot be considered a judicial admission that respondent had an unpaid obligation of P900,000 and that the agreement had been terminated for this reason.

On the second issue, petitioner argues that the CA should not have disregarded the testimony of petitioner's witness, Cristina Rayos, who prepared the statement of account on the basis of the invoices and delivery orders corresponding to the alleged overdue accounts of respondent.[12] The CA ruled that petitioner was not able to prove that respondent indeed had unpaid accounts, saying, among others, that the testimony of Rayos constituted incompetent evidence:

> xxx the appellee's alleged non-payment and outstanding balance of P995,319.81 was not sufficiently proven.
>
> xxx xxx xxx
>
> Anyway, the appellant's Statement of Account showing such alleged unpaid balance is undated, and it does not show receipt thereof by the appellee, and when, if such indeed was received. Moreover, there are no supporting documents to sustain such unpaid accounts. The witness for the appellant who prepared the Statement, Cristina Rayos, in fact admitted that the Invoices corresponding to the alleged overdue accounts are not signed. Her explanation was that there were DO's or Delivery Orders covering the transactions. However, she did not identify the signatures appearing on the Delivery Orders marked as Exhibits "13-A", "14-A", "15-A" and "16-A" as the persons who received the goods for the appellant. In any case, she could not have identified the same, for she was not involved in the delivery, as she is only in charge of the records and documents on all accounts receivables as part of her duties as Credit and Collection Manager.[13]

Petitioner contends that the testimony of Rayos was an exception to the hearsay rule under Section 43, Rule 130 of the Rules of Court:[14]

> Entries in the course of business. - Entries made at, or near the time of the transactions to which they refer, by a person deceased, or unable to testify, who was in a position to know the facts therein stated, may be received as prima facie evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty.

Petitioner's contention has no merit.

The provision does not apply to this case because it does not involve entries made in the course of business. Rayos testified on a statement of account she prepared on the basis of invoices and delivery orders which she, however, knew nothing about. She had no personal knowledge of the facts on which the accounts were based since, admittedly, she was not involved in the delivery of goods and was merely in charge of the records and documents of all accounts receivable as part of her duties as credit and collection manager.[15] She thus knew nothing of the truth or falsity of the facts stated in the invoices and delivery orders, i.e., whether such deliveries were in fact made in the amounts and on the dates stated, or whether they were actually received by respondent. She was not even the credit and collection manager during the period the agreement was in effect.[16] This can only mean that she merely obtained these documents from another without any personal knowledge of their contents.

The foregoing shows that Rayos was incompetent to testify on whether or not the invoices and delivery orders turned over to her correctly reflected the details of the deliveries made. Thus, the CA correctly disregarded her testimony.

Furthermore, the invoices and delivery orders presented by petitioner were self-serving. Having generated these documents, petitioner could have easily fabricated them. Petitioner's failure to present any competent witness to identify the signatures and other information in those invoices and delivery orders cast doubt on their veracity.

Petitioner next argues that respondent did not deny during the trial that it received the goods covered by the invoices and was therefore deemed to have admitted the same.[17] This argument cannot be taken seriously. From the very beginning, respondent's position was that petitioner concocted falsified charges of non-payment to justify the termination of their agreement.[18] In no way could respondent be deemed to have admitted those deliveries.

On the third issue, petitioner questions the award of actual damages in the amount of P1,000,000 and the refund of the P500,000 time deposit, contending that it validly terminated the agreement because of respondent's failure to pay its overdue accounts.

As discussed above, the CA declared that petitioner was not able to prove that respondent had unpaid accounts, thus debunking the claim of a valid termination. The CA also held petitioner guilty of various acts which violated the provisions of the agreement.[19] Consequently, for petitioner's breach of the agreement, the CA awarded actual damages to respondent in the amount of P1,000,000. Petitioner, other than claiming that it validly terminated the agreement, did not challenge the findings of the CA that it committed various violations of the agreement. Hence, there was legal basis for the grant of actual damages.

Petitioner asserts that the documentary evidence presented by respondent to prove actual damages in the amount of P4,246,015.60 should not have been considered because respondent's complaint only prayed for an award of P1,000,000. It further contends that the court acquires jurisdiction over the claim only upon payment of the prescribed docket fee.[20]

Indeed, a court acquires jurisdiction over the claim of damages upon payment of the correct docket fees.[21] In this case, it is not disputed that respondent paid docket fees based on the amounts prayed for in its complaint. Respondent adduced evidence to prove its losses. It was proper for the CA and the RTC to consider this evidence and award the sum of P1,000,000. Had the courts below awarded a sum more than P1,000,000, which was the amount prayed for, an additional filing fee would have been assessed and imposed as a lien on the judgment.[22] However, the courts limited their award to the amount prayed for.

Both the RTC and CA found that respondent had satisfactorily proven the factual bases for the damages adjudged against the petitioner. This is a factual matter binding and conclusive upon this Court.[23] It is well-settled that -

> . . . findings of fact of the trial court, when affirmed by the Court of Appeals, are binding upon the Supreme Court. This rule may be disregarded only when the findings of fact of the Court of Appeals are contrary to the findings and conclusions of the trial court, or are not supported by the evidence on record. But there is no ground to apply this exception to the instant case. This Court will not assess all over again the evidence adduced by the parties particularly where as in this case the findings of both the trial court and the Court of Appeals completely coincide.[24]

Likewise, the determination of the amount of damages commensurate with the factual findings upon which it is based is primarily the task of the trial court.[25] Considering that the amount adjudged is not excessive, we affirm its correctness.

Moreover, given that petitioner was not able to prove that respondent had unpaid accounts in the amount of P995,319.81, the seizure of the P500,000 time deposit was improper. As a result, the refund of this amount with interest is also called for.

Finally, petitioner's counterclaims are necessarily without merit. It failed to prove the alleged outstanding accounts of respondent. Accordingly, it is not entitled to the supposed unpaid balance of P495,319.81 with interest.

Petitioner, being at fault and in bad faith, and there being no proof that respondent was guilty of any wrongdoing,

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cannot claim moral and exemplary damages and attorney's fees from respondent.

In fine, we find no error in the assailed decision and resolution of the CA. We therefore affirm them.

WHEREFORE, the petition is hereby DENIED for lack of merit. The decision of the Court of Appeals dated January 11, 2001 and resolution dated November 14, 2001 in CA-G.R. CV No. 57299 are hereby AFFIRMED.

Costs against petitioner.

SO ORDERED.

Sandoval-Gutierrez, (Acting Chairperson), Azcuna, and Garcia, JJ., concur.
Puno, (Chairperson), J. on leave.

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[1] Penned by Associate Justice Delilah Vidallon-Magtolis and concurred in by Associate Justices Teodoro P. Regino and Josefina Guevara-Salonga of the 11th Division of the Court of Appeals; Rollo, pp. 27-46.

[2] Penned by Judge Oscar B. Pimentel.

[3] Penned by Associate Justice Delilah Vidallon-Magtolis and concurred in by Associate Justices Teodoro P. Regino and Josefina Guevara-Salonga of the Former 11th Division of the Court of Appeals; Rollo, p. 48.

[4] Civil Case No. 90-3169.

[5] Rollo, pp. 28-29.

[6] Rollo, pp. 27-28.

[7] Consisting of the P1,000,000 awarded by the RTC plus the P500,000 time deposit.

[8] Id., p. 46.

[9] Rollo, pp. 11-13.

[10]Id., p. 14.

[11] Id., pp. 79-80.

[12] Rollo, p. 15.

[13]Rollo, p. 39.

[14] Id., p. 16.

[15] That is, at the time she testified; Rollo, p. 16.

[16] Id., p. 78.

[17] Rollo, p. 16.

[18]Rollo, p. 28.

[19]Id., pp. 11-18.

[20]Rollo, pp. 16-17.

[21] Ballatan v. Court of Appeals, 363 Phil. 408, 416-417 (1999), citing Tacay v. RTC of Tagum, Davao del

Norte, G.R. Nos. 88075-77, 20 December 1989, 180 SCRA 433, 444; Sun Insurance Office, Ltd. (SIOL) v. Asuncion, G.R. Nos. 79937-38 13 February 1989, 170 SCRA 274, 285; Manchester Development Corporation v. Court of Appeals, No. L-75919, 7 May 1987, 149 SCRA 562, 568-569.

[22] Benguet Electric Cooperative, Inc. v. Court of Appeals, 378 Phil. 1137, 1150-1151 (1999), citing Ayala Corporation v. Madayag, G.R. No. 88421, 30 January 1990, 181 SCRA 687; Ng Soon v. Alday, G.R. No. 85879, 29 September 1989, 178 SCRA 221.

[23]China Airlines v. Chiok, G.R. No. 152122, 30 July 2003, 407 SCRA 432, 445, citing Guerrero v. Court of Appeals, 349 Phil. 605 (1998); Batingal v. Court of Appeals, 1 February 2001, 351 SCRA 60.

[24] Bank of the Philippine Islands v. Leobrera, G.R. No. 137147, 18 November 2003, 416 SCRA 15, 21-22, citing Mercado v. People, G.R. No. 149375, 26 November 2002, 392 SCRA 687.

[25] Tocao v. Court of Appeals, G.R. No. 127405, 4 October 2000, 342 SCRA 20, 38, citing Air France v. Carrascoso, 124 Phil. 772, 742 (1966).

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