PEPSICO, INC., DOING BUSINESS UNDER THE NAME AND STYLE PEPSICO RESTAURANTS INTERNATIONAL, PETITIONER, VS. EMERALD PIZZA, INC., RESPONDENT.

G.R. NO. 153059. August 14, 2007

Ponente: NACHURA, J.

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NACHURA, J.:

Before the court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the December 12, 2001 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 53758 and the April 16, 2002 Resolution[2] denying the motion for reconsideration thereof.

Petitioner PepsiCo, Inc. (PepsiCo) is a foreign corporation organized and existing under the laws of North Carolina, U.S.A. and licensed to do business in the Philippines.[3] Its operating unit, PepsiCo Restaurants International, oversees the company's restaurants outside the United States and Canada.[4]

On March 12, 1981, respondent Emerald Pizza, Inc. (Emerald), a domestic corporation, entered into a 20-year Franchise Agreement[5] with one of PepsiCo's restaurant businesses, the Pizza Hut, Inc. (Pizza Hut), a Delaware (U.S.A.) corporation. Emerald also entered into a Marketing Services Agreement with PepsiCo, which was implemented in March 1982.[6]

In order to show that the registration requirements of the Ministry (now Department) of Trade and Industry (MTI) were complied with, more specifically on the period of the franchise, the said agreement with Pizza Hut was amended on November 5, 1982.[7]

In 1988, due to an alleged breach by the franchisor of the franchise agreement, Emerald instituted a civil action against PepsiCo (not Pizza Hut). However, the parties amicably settled their differences and executed a compromise agreement to this effect on January 13, 1989.[8] This Agreement, which made reference to the 20-year franchise period stated in the March 12, 1981 Franchise Agreement, was signed by the authorized representatives of PepsiCo, Pizza Hut, and Emerald.

On March 3, 1989, in implementing the provisions of the compromise agreement, Emerald and Pizza Hut again executed an Amendatory Agreement.[9]

Then again, on account of purported violations by the franchisor of the franchise agreement, among which was its refusal to renew the franchise, Emerald, on April 23, 1996, instituted before the Regional Trial Court (RTC) of Pasig City, Branch 165, Civil Case No. 65645, a Complaint[10] against PepsiCo for specific performance, injunction and damages with an application for the issuance of a temporary restraining order (TRO) or a writ of preliminary injunction. The trial court initially ordered the parties to maintain the status quo for 72 hours.[11]

In opposing Emerald's application for a TRO, PepsiCo, through its resident representative, argued, among others, that it was not a signatory to the franchise agreement subject of the case, thus, the complaint states no cause of action for it was not brought against the real party-in-interest.[12]

After summary hearing, the RTC issued its April 26, 1996 Order,[13] lifting the previous restraining order and dismissing the complaint. The trial court based its dismissal not on PepsiCo's assertion that it was not a real party-in-interest but on its other argument that the case was premature. The pertinent portions of the said Order read:

> There being no allegation in the complaint much less was it shown (sic) that the instant dispute was submitted by the plaintiff for arbitration, the case at bar is prematurely filed and therefore, dismissable (sic) (Puromines, Inc. vs. Court of Appeals, 220 SCRA 281-291, G.R. No. 91228, March 22, 1993). The Court need not pass upon the other grounds/points raised in the position paper (opposition) of Yolanda M. Eleazar.
>
> Wherefore, the temporary restraining order issued on April 23, 1996 is lifted and this case is hereby dismissed for being prematurely filed.
>
> SO ORDERED.[14]

As its motion for reconsideration was later denied,[15] Emerald appealed the case to the CA.[16] While the appellate court agreed with the RTC that the complaint was prematurely filed because arbitration was not availed of as a remedy pursuant to the parties' franchise agreement, it found as erroneous the trial court's dismissal of the complaint.[17] The CA further found petitioner as a real party-in-interest, although it was not the franchisor in the original franchise agreement.[18] Thus, in the assailed December 12, 2001 Decision,[19] the CA disposed of the appeal as follows:

> WHEREFORE, the trial court's order of dismissal is REVERSED and SET ASIDE. If the parties cannot reach an amicable settlement at this late hour, then the trial court should give them at least 60 days from notice within which to settle their disputes by arbitration, and if no settlement is finalized within that period, it should hold a pre-trial and try the case. No costs.
>
> SO ORDERED.[20]

Both parties moved for the reconsideration of the said ruling, but the appellate court denied their motions on April 16, 2002.[21] PepsiCo elevated the case before us via Rule 45 on the sole proposition that the appellate court should have upheld the dismissal of the complaint as it was not filed against the real party-in-interest.[22] It mainly argues that PepsiCo and Pizza Hut are entities separate and distinct from each other;[23] that the parties to the franchise agreement and its amendments were Pizza Hut and respondent; and that it was not privy to the said agreement.[24]

For resolution, therefore, by the Court is the singular issue of whether or not PepsiCo is a real party-in-interest in the civil case filed by Emerald.

We rule in the affirmative.

Under the Rules of Civil Procedure, every action must be prosecuted or defended in the name of the real party-in-interest, the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.[25] "Interest" within the meaning of the rule means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest.[26]

The purpose of the rule is to protect parties against undue and unnecessary litigation and to ensure that the court will have the benefit of having before it the real adverse parties in the consideration of the case. This rule, however, is not to be narrowly and restrictively construed, and its application should be neither dogmatic nor rigid at all times but viewed in consonance with extant realities and practicalities.[27] Since a contract may be violated only by the parties thereto as against each other, in an action upon that contract, the real parties-in-interest, either

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as plaintiff or as defendant, must be parties to the said contract.[28]

It is true that PepsiCo is not a signatory to the March 12, 1981 Franchise Agreement, the parties thereto being only Pizza Hut and Emerald. However, the settlement agreement entered into by the parties herein and Pizza Hut on January 13, 1989 clearly reveals that PepsiCo also assumed the obligations of Pizza Hut in the said franchise agreement and that it was in effect acting as a franchisor together with Pizza Hut, thus:

A G R E E M E N T

In order to settle the differences between PepsiCo Food Service International and Emerald Pizza, Inc. as well as the pending litigation between Emerald Pizza, Inc. and PepsiCo, Inc., et al., it is agreed that:

[1] Emerald's Cubao unit will be relocated to Robinson's Galleria Shopping Complex located at the corner of EDSA and Ortigas Ave., such unit to be opened for business by Dec. 31, 1989 or not later than the publicized official opening date of the aforesaid shopping complex. There will be no competition free zone with regard to this unit, but further unit development will only be allowed in conformity with Pizza Hut established standards and procedures. Disclosure of available data to justify further unit development is assured to Emerald by the Franchisor.

[2] Emerald will be granted a third unit site in Alabang, such unit to be identified and construction to commence not later than June 30, 1989, with commercial operation to be commenced not later than December 31, 1989.

[3] Effective as of the date of the signing of this document, the protective radius for all units will be reduced from 3 kms. to 0.5 km.

[4] Effective as of the date of the signing of this document, additional Pizza Hut restaurants will be allowed to be constructed and opened within the 0.5 km. protective radius of the existing Cubao Pizza Hut prior to Dec. 31, 1989, provided Apex guarantees Emerald's 1989 sales based on 1988 sales by allowing Emerald to withhold the pertinent amount/s from the rental proceeds due to Apex from Emerald.

[5] PepsiCo represents that Apex shall accede to the terms of this Agreement.

[6] The Franchisor agrees to execute a Franchise Agreement as soon as possible, granting a three-restaurant franchise, with explicit right to relocate (as close as possible to the existing restaurant site and subject to the approval of PepsiCo Food Service, Int'l) in the event of lease expiration/termination, to Emerald for submission to the Technology Transfer Board, without prejudice to the original term agreed upon in the Franchise Agreement of March 12, 1981.

[7] Pursuant to this Agreement, the parties after the execution of the new Franchise Agreement shall instruct their respective counsels to submit the appropriate motion/s in court for the purpose of dismissing the same with prejudice.

Pasig, Metro Manila, January 13, 1989.

PEPSICO, INC.
PIZZA HUT, INC.
PEPSICO FOOD SERVICE
INTERNATIONAL
(FRANCHISOR) EMERALD PIZZA, INC.
(FRANCHISEE)

By:

TONY KITCHNER

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Director Franchise Operations
SouthEast Asia By:

(signed)

GLORIA A. SABIDO
President

(signed)

REMEDIOS P. ERAÑA
Vice-President

(signed)

JOSEPH J. JOYCE
PEPSICO, INC.

Vice-President
Asst. General Counsel

(signed)

ROBERTO F. DEL CASTILLO
ACABAN CORVERA DEL CASTILLO
Legal Counsel[29]

PepsiCo could not have allowed Emerald to relocate its then existing restaurant, granted it a third unit site, reduced the protective radius of the franchise, guaranteed its sales, represented that the overseeing unit would accede to the settlement, and agreed to execute a franchise agreement without prejudice to the original term agreed upon in the March 12, 1981 franchise, had it not been acting as one of the franchisors or had it not assumed the duties, rights and obligations of a franchisor. Thus, in this suit involving the franchise, PepsiCo is a real party-in-interest.

The subsequent execution of the amendatory agreement on March 3, 1989 only by and between Emerald and Pizza Hut does not in any way relieve PepsiCo of the obligations it assumed as a franchisor in the settlement agreement. Let it be noted that the said amendatory agreement came into being merely to formally implement the stipulations in the settlement.

Moreover, Emerald in its complaint before the RTC pleaded as one of its causes of action the franchisor's refusal to abide by the 20-year franchise period, one of the important subjects of the settlement to which both PepsiCo and Pizza Hut conformed. Necessarily, therefore, both of them, PepsiCo and Pizza Hut, will stand to benefit from a possible breach of the said provision.

Notably, however, while PepsiCo was properly impleaded as a party defendant, Pizza Hut, an indispensable party, was not. An indispensable party is a party-in-interest without whom no final determination can be had of an action, and who shall be joined either as plaintiff or defendant.[30] The joinder of indispensable parties is mandatory. Their presence is necessary to vest the court with jurisdiction, which is "the authority to hear and determine a cause, the right to act in a case." Thus, without their presence to a suit or proceeding, judgment of a court cannot attain real finality. The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.[31]

Nevertheless, the non-joinder of indispensable parties is not a ground for the dismissal of an action, and the

remedy is to implead the non-party claimed to be indispensable. Parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or at such times as are just.[32] If the petitioner refuses to implead an indispensable party despite the order of the court, the latter may dismiss the complaint/petition for the plaintiff/petitioner's failure to comply therewith.[33]

Hence, as no final ruling on this matter can be had without impleading Pizza Hut, its inclusion is necessary for the effective and complete resolution of the case and in order to accord all parties the benefit of due process and fair play.[34]

WHEREFORE, premises considered, the appeal is DENIED DUE COURSE. The December 12, 2001 Decision of the Court of Appeals in CA-G.R. CV No. 53758 is AFFIRMED, with the MODIFICATION that the trial court include Pizza Hut, Inc. as an indispensable party to the case.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Eliezer R. de los Santos, with Associate Justices Eubolo G. Verzola (deceased) and Rodrigo V. Cosico concurring; rollo, pp. 251-267.

[2] Id. at 360-361.

[3] Rollo, p. 59.

[4] Records, p. 153.

[5] Id. at 16-45.

[6] Id. at 156.

[7] Id. at 50-55.

[8] Id. at 73-74.

[9] Id. at 75-79.

[10] Id. at 1-15.

[11] Id. at 81.

[12] Id. at 119-121.

[13] Id. at 132-136.

[14] Id. at 136.

[15] Id. at 196.

[16] Id. at 197.

[17] CA rollo, pp. 260-267.

[18] Id. at 261-262.

[19] Id. at 251-267.

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[20] Id. at 267.

[21] Id. at 360-361.

[22] Rollo, pp. 69-77.

[23] Id. at 72-73.

[24] Id. at 70-72.

[25] RULES OF COURT, Rule III, Section 2.

[26] BPI Family Bank v. Buenaventura, G.R. No. 148196, September 30, 2005, 471 SCRA 431, 441-442.

[27] Manila International Airport Authority v. Rivera Village Lessee Homeowners Association, Incorporated, G.R. No. 143870, September 30, 2005, 471 SCRA 358, 372.

[28] BPI Family Bank v. Buenaventura, supra, at 442.

[29] Records, pp. 73-74.

[30] RULES OF COURT, Rule III, Section 7.

[31] Lotte Phil. Co., Inc. v. Dela Cruz, G.R. No. 166302, July 28, 2005, 464 SCRA 591, 595-596.

[32] RULES OF COURT, Rule III, Section 11.

[33] CommissionerDomingo v. Scheer, 466 Phil. 235, 265 (2004).

[34] Lotte Phil. Co., Inc. v. Dela
Cruz, supra, at 597.

[34] Lotte Phil. Co., Inc. v. Dela Cruz, supra, at 597.

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