

PILIPINO TELEPHONE CORPORATION, PETITIONER, VS. RADIOMARINE NETWORK (SMARTNET) PHILIPPINES, INC., RESPONDENT.

G.R. No. 160322. August 24, 2011

Ponente: ABAD, J.

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ABAD, J.:

This case is about a party's right to summary judgment when the pleadings show that there are no genuine issues of fact to be tried.

The Facts and the Case

On December 11, 1996 petitioner Pilipino Telephone Corporation (Piltel) expressed its willingness, on purely best effort, to buy in 1997 from respondent Radiomarine Network, Inc. (Smartnet) 300,000 units of various brands of cellular phones and accessories (Motorola, Mitsubishi, and Ericsson).[1]

On the following day, December 12, 1996, Piltel agreed to sell to Smartnet a 3,500-square meter lot,[2] known as the Valgoson Property, in Makati City for P560 million. Smartnet agreed to pay Piltel P180 million as down payment with the balance of P380 million to be partly set off against the obligations that Piltel was to incur from its projected purchase of cellular phones and accessories from Smartnet. Smartnet agreed to settle any unpaid portion of the purchase price of the land after the set off on or about April 30, 1997.

The contract to sell between the parties provides:

The total consideration of FIVE HUNDRED SIXTY MILLION PESOS (P560,000,000.00) shall be paid by the VENDEE [Smartnet], without the need of any demand, to the VENDOR [Piltel] in the following manner:

(a) a downpayment in the amount of ONE HUNDRED EIGHTY MILLION (P180,000,000.00) PESOS, to be paid on or before December 28, 1996;

(b) Any and all outstanding payables which the VENDOR [Piltel] owes to the VENDEE [Smartnet] in consideration of the cellular phone units and accessories ordered by the VENDOR [Piltel] and delivered by the VENDEE [Smartnet] between the initial downpayment date i.e. December 28, 1996 and April 30, 1997, shall be credited to the VENDEE [Smartnet] as additional payment of the purchase price.

(c) The remaining balance, after deducting (a) and (b) above, shall be paid on or about April 30, 1997. It is expressly understood however, that the VENDOR [Piltel] shall submit to the VENDEE [Smartnet], on or about April 20, 1997, a Statement of Account updating the deliveries of cellular phones and its outstanding amount in order that the VENDEE [Smartnet] can prepare the final payment. In this way, the amount of final payment shall be made to the VENDOR [Piltel] on or before April 30, 1997. Should the VENDOR [Piltel] be delayed in the submission of the said Statement on the stipulated date, the date of payment of the remaining balance shall be automatically adjusted for a period equivalent to the number of days by which the VENDOR [Piltel] is delayed in the submission thereof.[3]

The parties also agreed on a rescission and forfeiture clause[4] which provided that, if Smartnet fails to pay the full price of the land within the stipulated period and within five days after receipt of a notice of delinquency, it would automatically forfeit to Piltel 10% of the P180 million down payment or P18 million and the contract shall be without force and effect.

Smartnet failed to pay the P380 million balance of the purchase price on or about the date it fell due. On December 19, 1997 Piltel returned P50 million to Smartnet, a portion of the P180 million down payment that it received. Smartnet later requested Piltel for the return of the remaining P130 million but the latter failed to do so.[5]

On December 1, 1999 Smartnet filed a complaint[6] against Piltel for rescission of their contract to sell involving the Valgoson Property or its partial specific performance before the Regional Trial Court (RTC)[7] of Makati City in Civil Case 99-2041. Smartnet alleged, among other things, that it withheld payment of the balance of the purchase price of the subject property because Piltel reneged on its commitment to purchase from Smartnet 300,000 units of cellular phones and accessories.

Smartnet asked the court to (a) order Piltel to convey to Smartnet at least 32% interest in the Valgoson Property, representing the value of its down payment of P180 million or, in the alternative, order Piltel to return to Smartnet its P180 million down payment plus interest; (b) order Piltel to pay Smartnet P81,300,764.96, representing the value of the 300,000 units of various cellular phones which it acquired pursuant to Piltel's commitment to buy them but which commitment Piltel disregarded, plus interest, as actual and compensatory damages; and (c) order Piltel to pay Smartnet P500,000.00 in attorney's fees.

In its answer with counterclaims,[8] Piltel claimed that the agreement to purchase cellular phones and accessories was not part of its contract with Smartnet for the sale of the Valgoson Property and that Piltel committed to buy equipment from Smartnet only on a best effort basis. For this reason, Piltel pointed out, Smartnet did not have the power to rescind the contract to sell the Valgoson Property and, hence, cannot invoke that contract's rescission and forfeiture clause. Piltel sought full payment by Smartnet of the purchase price for the Valgoson Property, moral damages, exemplary damages, and litigation expenses.

On October 3, 2000 Smartnet filed a motion for partial summary judgment[9] for the return of the down payment it paid Piltel. The RTC granted the motion on November 13, 2000[10] and ordered Piltel to return the P180 million down payment that it received less the forfeited amount of P18 million and the cash advance of P50 million or a net of P112 million, with interest at 6% per annum from the time of the extrajudicial demand on it on October 20, 1998 until finality of the judgment and an additional 12% legal interest after the judgment becomes final and executory until the same is satisfied. Piltel filed a motion for reconsideration which the RTC denied for lack of merit on January 30, 2001.

On March 15, 2001 Smartnet filed a manifestation and motion, withdrawing its two remaining causes of action and praying for the issuance of a writ of execution. On March 20, 2001 it filed an alternative motion for execution pending appeal of the RTC's partial decision.

On April 4, 2001 Piltel filed with the Court of Appeals (CA)[11] a special civil action for certiorari with application for a temporary restraining order and a writ of preliminary injunction. Piltel alleged that the RTC presiding judge, Reinato G. Quilala, gravely abused his discretion when he issued a partial summary judgment in the case and denied Piltel's motion for reconsideration. But the CA dismissed the petition, prompting Piltel to challenge such dismissal before this Court in G.R. 152092.

Meantime, on April 23, 2001 the RTC granted (a) Smartnet's motion to withdraw its remaining causes of action

and (b) its motion for execution pending appeal.[12] Consequently, a writ of execution was issued on April 24, 2001.

On April 25, 2001 Piltel filed a notice of appeal to the CA from the judgment of November 13, 2000 and from the April 23, 2001 Order that allowed execution pending appeal. The appeal to the CA was docketed as CA-G.R. CV 71805.

On April 26, 2001 Piltel filed with the RTC a motion to defer execution pending appeal upon the posting of a supersedeas bond. The RTC denied the motion. Piltel filed a motion for reconsideration but the court denied it on August 14, 2001[13] and directed Piltel to pay 12% interest on the judgment amount from April 23, 2001, when it allowed the execution pending appeal. Piltel filed a supplemental notice of appeal to the CA from this last order.

On June 11, 2003 the CA dismissed Piltel's appeal in CA-G.R. CV 71805.[14] The appellate court held that the RTC did not err when it granted summary judgment since there were no genuine issues involved in the case. The CA said that Smartnet's failure to pay the balance of the purchase price ipso facto avoids the contract to sell. With the denial of its motion for reconsideration,[15] Piltel filed this petition under Rule 45 of the Rules of Court.

Meantime, the Court in G.R. 152092[16] denied Piltel's petition on August 4, 2010. The Court affirmed the CA's ruling in CA-G.R. SP 64155 that appeal, and not certiorari, is the proper remedy. Moreover, it held that Piltel committed forum shopping when it filed a petition for certiorari and a notice of appeal to assail the same resolutions and orders of the RTC.

With the denial of G.R. 152092, the Court is now left with this petition assailing the CA's dismissal of Piltel's appeal in CA-G.R. CV 71805.

The Issue Presented

The core issue for resolution is whether or not there are genuine issues of fact to be tried in this case.

The Court's Ruling

A genuine issue of fact is that which requires the presentation of evidence, as distinguished from a sham, fictitious, contrived or false issue. When the facts as pleaded appear uncontested or undisputed, then there is no real or genuine issue. Summary judgment is proper in such a case.[17]

Here, Piltel contends that summary judgment is out of place because the parties raise factual issues of fraud and breach of contract. Although their contract has a built-in rescission and forfeiture clause, this becomes operative only upon the occurrence of the following conditions: 1) Piltel sends a Statement of Account to Smartnet; 2) Smartnet fails to pay within 10 days from receipt of the statement; 3) Piltel sends a Notice of Delinquency to Smartnet; and 4) Smartnet fails to pay within five days from receipt of the notice.

The rescission and forfeiture clause thus reads:

In case the VENDEE fails to fully pay, within the stipulated period, the balance of the total consideration under Article 2(c) of this Contract to Sell, the VENDOR shall send a notice of delinquency to the VENDEE. Failure on the part of the VENDEE to pay within five (5) days from receipt of said notice, ten (10%) percent of the downpayment or EIGHTEEN MILLION PESOS (P18,000,000.00) PESOS, Philippine Currency shall automatically be forfeited in favor of the VENDOR and the Contract to Sell shall be without force and effect.[18]

Notably, however, both Piltel and Smartnet admit that they entered into a contract to sell covering the Valgozon Property; that Smartnet agreed to pay Piltel P560 million for it, with a down payment of P180 million; and that Smartnet failed to pay the balance of the purchase price on or about April 30, 1997.

With these common admissions, it is clear that there are no genuine issues of fact as to the existence and nature of the contract to sell as well as Smartnet's failure to pay the balance of the purchase price within the agreed period. Thus, the RTC was correct in skipping trial and deciding the case through a summary judgment based on the undisputed facts.

Smartnet's allegations respecting fraud and breach of contract referred to what appears to be Piltel's non-binding promise to buy cellular phones and accessories from Smartnet. These are matters independent of the parties' agreement concerning Piltel's sale of the Valgoson Property to Smartnet. The contract to sell of such property was not legally linked or made dependent on the aborted cellular phone deal between the parties. Indeed, Smartnet dropped with leave of court its causes of action relating to such deal.

All that matters is that since Smartnet failed to pay the balance of the purchase price, automatic rescission set in and this placed Piltel under an obligation to return the down payment it received, less the portion that it forfeited due to Smartnet's default. Consequently, it is but proper for Piltel to fully abide by such obligation. Piltel cannot avoid rescission since it in fact partially abided by rescission's consequences when it returned to Smartnet on December 19, 1997 a P50 million portion of the down payment it received.

By returning part of the down payment, it is clear that Piltel recognized that the contract to sell the Valgoson Property had reached the point of automatic rescission. Piltel is, therefore, in estoppel to deny rescission based on a claim that it had not yet sent a statement of account or a notice of delinquency to Smartnet regarding the latter's default. Such statement of account and notice of delinquency had become academic.

Piltel argues that Smartnet cannot, as a defaulting buyer, rescind the contract to sell between them by the simple act of refusing to pay. But, Smartnet's nonpayment of the full price of the property was not an act of rescission. It was but an event that rendered the contract to sell without force and effect. In a contract to sell, the prospective seller binds himself to part with his property only upon fulfillment of the condition agreed, in this case, the payment in full of the purchase price. If this condition is not fulfilled, the seller is then released from his obligation to sell.

As the Court said in *Heirs of Cayetano Pangan and Consuelo Pangan v. Perreras*,^[19] the payment of the purchase price in a contract to sell is a positive suspensive condition, the failure of which is not a breach but a situation that results in the cancellation of the contract. Strictly speaking, therefore, there can be no rescission or resolution of an obligation that is still non-existent due to the non-happening of the suspensive condition.^[20]

Likewise, a cause of action for specific performance does not arise where the contract to sell has been cancelled due to nonpayment of the purchase price.^[21] Smartnet obviously cannot demand title to the Valgoson Property because it did not pay the purchase price in full. For its part, Piltel also cannot insist on full payment since Smartnet's failure to pay resulted in the cancellation of the contract to sell. Indeed, in the case of *Ayala Life Assurance, Inc. v. Ray Burton Dev't. Corp.*,^[22] the Court rejected the seller's demand for full payment and instead ordered it to refund to the buyer all sums previously paid. The order to refund is correct based on the principle that no one should unjustly enrich himself at the expense of another.^[23]

Lastly, the Court sustains the CA's imposition of 12% interest pursuant to our ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*.^[24]

WHEREFORE, premises considered, the Court DENIES the petition and AFFIRMS the June 11, 2003 Decision and the October 6, 2003 Resolution of the Court of Appeals in CA-G.R. CV 71805.

SO ORDERED.

Velasco, Jr., (Chairperson), Leonardo-De Castro,[*] Peralta, and Mendoza, JJ., concur.

[*] Designated as additional member in lieu of Associate Justice Maria Lourdes P. A. Sereno, per Special Order 1069 dated August 23, 2011.

[1] Records, p. 46.

[2] Transfer Certificate of Title (TCT) T-195516.

[3] Rollo, p. 84.

[4] Id. at 85.

[5] Records, pp. 48-51.

[6] Id. at 1-10.

[7] Branch 57.

[8] Records, pp. 169-195.

[9] Rollo, pp. 162-177.

[10] Id. at 196-200. Penned by Presiding Judge Reinato G. Quilala.

[11] In CA-G.R. SP 64155.

[12] Rollo, pp. 496-498.

[13] Records, pp. 1086-1087.

[14] Rollo, pp. 62-75. Penned by Associate Justice Sergio L. Pestaño and concurred in by Associate Justices Bernardo P. Abesamis and Noel G. Tijam.

[15] Id. at 77-82. Then Court of Appeals Associate Justice Arturo D. Brion, now Associate Justice of the Supreme Court, participated in the resolution of the motion for reconsideration.

[16] Pilipino Telephone Corporation v. Radiomarine Network, Inc., 626 SCRA 702. Penned by Associate Justice Teresita J. Leonardo-De Castro and concurred in by Chief Justice Renato C. Corona, and Associate Justices Lucas P. Bersamin, Mariano C. Del Castillo and Jose P. Perez.

[17] D.M. Consunji, Inc. v. Duvaz Corporation, G.R. No. 155174, August 4, 2009, 595 SCRA 111, 120, citing Asian Construction and Development Corporation v. Philippine Commercial Industrial Bank, G.R. No. 153827, April 25, 2006, 488 SCRA 192, 203.

[18] Rollo, p. 85.

[19] G.R. No. 157374, August 27, 2009, 597 SCRA 253, 264.

[20] Garcia v. Court of Appeals, G.R. No. 172036, April 23, 2010, 619 SCRA 280, 287.

[21] Ayala Life Assurance, Inc. v. Ray Burton Dev't. Corp., 515 Phil. 431, 439 (2006).

[22] Id.

[23] Padilla v. Spouses Paredes, 385 Phil. 128, 142 (2000).

[24] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

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