

DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS. BEN P. MEDRANO AND PRIVATIZATION MANAGEMENT OFFICE [PMO], RESPONDENTS.*G.R. No. 167004. February 07, 2011*

Ponente: VILLARAMA, JR., J.

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This petition for review on certiorari assails the Decision[1] dated December 14, 2004 and Resolution[2] dated February 8, 2005 of the Court of Appeals (CA) in CA-G.R. CV No. 65436. The CA affirmed in toto the Decision[3] dated January 26, 1999 of the Regional Trial Court (RTC) of Pasig City, Branch 158, ordering petitioner Development Bank of the Philippines (DBP) to pay respondent Ben Medrano the following: (1) the amount of P2,449,265.00 representing the value of the purchase price of Medrano's 37,681 shares in Paragon Paper Industries, Inc. plus legal interest from date of first demand; (2) attorney's fees in the amount of P100,000.00; and (3) the cost of suit.

The facts, as culled from the records, are as follows.

Respondent Ben Medrano was the President and General Manager of Paragon Paper Industries, Inc. (Paragon) wherein he owned 37,681 shares. Sometime in 1980, petitioner DBP sought to consolidate its ownership in Paragon. In one of the meetings of the Paragon Executive Committee, the Chairman Jose B. de Ocampo, instructed Medrano, as President and General Manager of Paragon, to contact or sound off the minority stockholders and to convince them to sell their shares to DBP at P65.00 per share, or 65% of the stock's par value of P100.00. Medrano followed the instructions and began to contact each member of the minority stockholders. He was able to contact all except one who was in Singapore. Medrano testified that all, including himself, agreed to sell, and all took steps to have their shares surrendered to DBP for payment.[4] They made proposals to DBP and the Board of Directors of DBP approved the sale under DBP Resolution No. 4270 subject to the following terms and conditions: (1) that prior to the implementation of the approval, 57,596 shares of Paragon's stock issued to the stockholders concerned shall first be surrendered to the DBP; (2) that all the parties concerned shall give their written conformity to the arrangement; and (3) that the transaction shall be implemented within forty-five (45) days from the date of approval (December 24, 1980); otherwise, the same shall be deemed canceled. Medrano then indorsed and delivered to DBP all his 37,681 shares which had a value of P2,449,265.00. DBP accepted said shares and took over Paragon.

DBP, through Jose de Ocampo, who was also a member of its Board of Governors, also offered Medrano a commission of P185,010.00 if the latter could persuade all the other Paragon minority stockholders to sell their shares. Medrano was able to convince only two stockholders, Alberto Wong and Gerardo Ledonio III, to sell their respective shares. Thus, his commission was reduced to P155,455.00.

Thereafter, Medrano demanded that DBP pay the value of his shares, which he had already turned over, and his P155,455.00 commission. When DBP did not heed his demand, Medrano filed a complaint for specific

performance and damages against DBP on September 2, 1981.

DBP filed an Answer arguing that there was no perfected contract of sale as the three conditions in DBP Resolution No. 4270 were not fulfilled. Likewise, certain minority stockholders owning 17,635 shares refused to sell their shares. Hence, DBP exercised its right to cancel the sale under Resolution No. 4270.

Later, during the pendency of the case, DBP conveyed the shares to the Asset Privatization Trust (APT) in a Deed of Transfer when the APT took over certain assets, and assumed the liabilities, of government financial institutions including DBP. As the transferee of the shares, the APT was impleaded as party-defendant. DBP thereafter filed a cross-claim against the APT which was later on substituted by the Privatization Management Office (PMO). Medrano adopted his evidence against DBP as his evidence against the APT while the APT adopted DBP's evidence and defenses against Medrano. On the cross-claim, the APT raised the defense that the liabilities assumed by the National Government and referred to in the Deed of Transfer are liabilities to local and foreign intermediaries and guarantees and not to individual persons like Medrano.

On January 26, 1999, the RTC ruled in Medrano's favor and dismissed DBP's cross-claim against the APT, to wit:

WHEREFORE, in view of the foregoing, judgment is rendered in favor of the plaintiff and against defendant Development Bank of the Philippines ordering the latter to pay the former the following: (1) the amount of P2,449,265.00 representing the value of the purchase price of plaintiff's 37,681 shares in Paragon plus legal rate of interest from date of first demand; (2) attorney's fees in the amount of P100,000.00; and (3) the cost of suit.

The cross-claim of defendant DBP against the other defendant Asset Privatization Trust is dismissed because defendant Development Bank of the Philippines' accountability to the plaintiff [is] based on act[s] solely imputable to it.

SO ORDERED.[5]

Dissatisfied, DBP elevated the case to the CA. DBP prayed that the trial court's decision be reversed and that DBP be absolved from any and all liabilities to Medrano.

Medrano, for his part, prayed in his appellee's brief that DBP be ordered to pay his commission of P155,445.00.[6]

On December 14, 2004, the CA issued the challenged Decision[7] and affirmed the decision of the trial court. The CA, however, refused to grant Medrano's prayer for the payment of commission because Medrano did not appeal the trial court's decision but instead prayed for the payment of his commission only in his appellee's brief.

The CA held that there existed between DBP and Medrano a contract of sale and the conditions imposed by Resolution No. 4270 were merely conditions imposed on the performance of an obligation. Hence, while under Article 1545[8] of the Civil Code, DBP had the right not to proceed with the agreement upon Medrano's failure to comply with the conditions, DBP was deemed to have waived the performance of the conditions when it chose to retain Medrano's shares and later transfer them to the APT. The CA noted that the retention of the shares was contrary to DBP's claim of rescission because if indeed DBP rescinded the sale, then it should have returned to Medrano his shares together with their fruits and the price with interests, as provided by Article 1385[9] of the Civil Code.

DBP filed a motion for reconsideration, but the same was denied by the CA in a Resolution[10] dated February 8, 2005. Hence, this appeal.

DBP alleges that the CA erred

I

... WHEN IT REACHED A CONCLUSION WHICH IS NOT A LOGICAL CONSEQUENCE OF ITS FINDING THAT THERE WAS NO PERFECTED CONTRACT OF SALE BETWEEN DBP AND MEDRANO AND PROCEEDED TO MAKE A CONTRACT FOR THE PARTIES IN THE INSTANT CASE.

II

... WHEN IT APPLIED ARTICLE 1545 OF THE CIVIL CODE OF THE PHILIPPINES NOTWITHSTANDING ITS FINDING THAT THERE WAS NO PERFECTED CONTRACT OF SALE BETWEEN MEDRANO AND DBP.

III

... WHEN IT FAILED TO EXERCISE ITS AUTHORITY TO RULE ON MATTERS WHICH ARE THE NATURAL AND LOGICAL CONSEQUENCE OF ITS FINDINGS OF FACTS OR THAT ARE INDISPENSABLE AND NECESSARY TO THE JUST RESOLUTION OF THE PLEADED ISSUES, EVEN IF NOT RAISED AS ISSUES IN THE APPEAL.

IV

... WHEN IT FAILED TO CONSIDER THE ESTABLISHED FACT THAT THE ASSETS OF PARAGON PAPER INDUSTRIES, INC., INCLUDING THE SUBJECT CERTIFICATE OF STOCKS, WERE TRANSFERRED TO THE ASSET PRIVATIZATION TRUST, NOW THE PRIVATIZATION MANAGEMENT OFFICE, HEREIN CO-DEFENDANT. HENCE, THE PMO SHOULD BE THE PARTY THAT SHOULD BE MADE TO RETURN THE SUBJECT CERTIFICATES OF STOCKS OR PAY THE SAID SHARES OF STOCKS.

V

... WHEN IT AFFIRMED THE AWARD OF ATTORNEY'S FEES, DAMAGES AND COST OF SUIT IN FAVOR OF RESPONDENT MEDRANO CONTRARY TO LAW AND THE PERTINENT DECISIONS OF THIS HONORABLE SUPREME COURT.[11]

Essentially, the issue in this case is whether the CA erred in applying Article 1545 of the Civil Code and holding that DBP exercised the second option under the said article to justify the order against DBP to pay the value of Medrano's shares of stock. As a side issue, DBP also questions the award of attorney's fees in Medrano's favor.

In fine, DBP contends that the trial court and the CA both ruled that there was no perfected contract of sale in this case and that accordingly, it was erroneous for them to order DBP to pay Medrano the value or price of the object of the sale. DBP insists that the proper order was to direct DBP or the PMO, which now has possession of the shares, to return the shares of stock. By ordering DBP to pay the purchase price of the stocks, DBP argues that the CA in effect created a new contract of sale between the parties.[12]

DBP adds that the CA erred in applying Article 1545 of the Civil Code. According to DBP, Article 1545 of the Civil Code only applies to a perfected contract of sale and since there is no such perfected contract in this case because of Medrano's failure to meet all the conditions agreed upon, the application of this article by the CA is misplaced.

Lastly, DBP questions the award of attorney's fees to Medrano. DBP maintains that there was no unjustified refusal to pay for the shares of stock transferred to DBP as there was no perfected contract of sale.

Medrano, for his part, argues that by retaining the shares of stock transferred to it and later even appropriating and

transferring them to the APT, DBP is deemed to have exercised the second option under Article 1545 of the Civil Code, that is, it waived performance of the conditions imposed by Resolution No. 4270. The original conditional sale was thus converted into, and correctly treated by the courts a quo, as an absolute, unconditional sale where compliance with the obligation of the buyer to pay the purchase price may be demanded.

As regards the award of attorney's fees, Medrano maintains that he was constrained to acquire the services of a lawyer and use legal means to enforce his rights over the shares in question. He argues that since DBP refused to pay for or return the shares that he transferred to it, he was left with no other option but to go to court. Hence, the award of attorney's fees is legally justified.

We sustain the CA.

As a rule, a contract is perfected upon the meeting of the minds of the two parties. Under Article 1475[13] of the Civil Code, a contract of sale is perfected the moment there is a meeting of the minds on the thing which is the object of the contract and on the price.

In the case of *Traders Royal Bank v. Cuison Lumber Co., Inc.*, [14] the Court ruled:

Under the law, a contract is perfected by mere consent, that is, from the moment that there is a meeting of the offer and the acceptance upon the thing and the cause that constitute the contract. The law requires that the offer must be certain and the acceptance absolute and unqualified. An acceptance of an offer may be express and implied; a qualified offer constitutes a counter-offer. Case law holds that an offer, to be considered certain, must be definite, while an acceptance is considered absolute and unqualified when it is identical in all respects with that of the offer so as to produce consent or a meeting of the minds. We have also previously held that the ascertainment of whether there is a meeting of minds on the offer and acceptance depends on the circumstances surrounding the case.

... the offer must be certain and definite with respect to the cause or consideration and object of the proposed contract, while the acceptance of this offer - express or implied - must be unmistakable, unqualified, and identical in all respects to the offer. The required concurrence, however, may not always be immediately clear and may have to be read from the attendant circumstances; in fact, a binding contract may exist between the parties whose minds have met, although they did not affix their signatures to any written document. (Italics supplied.)

Also, in *Manila Metal Container Corporation v. Philippine National Bank*, [15] the Court ruled,

A qualified acceptance or one that involves a new proposal constitutes a counter-offer and a rejection of the original offer. A counter-offer is considered in law, a rejection of the original offer and an attempt to end the negotiation between the parties on a different basis. Consequently, when something is desired which is not exactly what is proposed in the offer, such acceptance is not sufficient to guarantee consent because any modification or variation from the terms of the offer annuls the offer. The acceptance must be identical in all respects with that of the offer so as to produce consent or meeting of the minds. (Italics supplied.)

In the present case, Medrano's offer to sell the shares of the minority stockholders at the price of 65% of the par value was not absolutely and unconditionally accepted by DBP. DBP imposed several conditions to its acceptance and it is clear that Medrano indeed tried in good faith to comply with the conditions given by DBP but unfortunately failed to do so. Hence, there was no birth of a perfected contract of sale between the parties.

The petitioner is also correct that Paragraph 1, Article 1545 of the Civil Code speaks of a perfected contract of sale. Paragraph 1, Article 1545 of the Civil Code provides:

ART. 1545. Where the obligation of either party to a contract of sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or he may waive performance of the condition.

If the other party has promised that the condition should happen or be performed, such first mentioned party may also treat the nonperformance of the condition as a breach of warranty.

x x x x (Italics supplied.)

It is clear from a plain reading of this article that it speaks of a party to a contract of sale who fails in the performance of his/her obligation. The application of this article presupposes that there is a perfected contract between the parties and that one of them fails in the performance of an obligation under the contract.

The present case does not fall under this article because there is no perfected contract of sale to speak of. Medrano's failure to comply with the conditions set forth by DBP prevented the perfection of the contract of sale. Hence, Medrano and DBP remained as prospective-seller and prospective-buyer and not parties to a contract of sale.

This notwithstanding, however, we cannot simply agree with DBP's argument that since there is no perfected contract of sale, DBP should not be ordered to pay Medrano any amount.

The factual scenario of this case took place in 1980 or over thirty (30) years ago. Medrano had turned over and delivered his own shares of stock to DBP in his attempt to comply with the conditions given by DBP. DBP then accepted the shares of stock as partial fulfillment of the conditions that it imposed on Medrano. However, after the lapse of some time and after it became clear that Medrano would not be able to comply with the conditions, DBP decided to retain Medrano's shares of stock without paying Medrano. After the realization that DBP would in fact not pay him for his shares of stock, Medrano was constrained to file a suit to enforce his rights.[16]

In civil law, DBP's act of keeping the shares delivered by Medrano without paying for them constitutes unjust enrichment. As we held in *Car Cool Philippines, Inc. v. Ushio Realty and Development Corporation*[17],

... "[t]here is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." Article 22 of the Civil Code provides that "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him." The principle of unjust enrichment under Article 22 requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at another's expense or damage.

It was not proper for DBP to hold on to Medrano's shares of stock after it became obvious that he will not be able to comply with the conditions for the contract of sale. From that point onwards, the prudent and fair thing to do for DBP was to return Medrano's shares because DBP had no just or legal ground to retain them.

We find that equitable considerations militate against DBP's claimed right over the subject shares. First, it is clear that DBP did not buy the shares from Medrano as it even asserts there was no perfected contract of sale because of the failure of the latter to comply with DBP's conditions. Second, it cannot be said that Medrano voluntarily donated his shares of stock as he is in fact still trying to recover them 30 years later. Third, it cannot be said that DBP was merely holding the shares of stock for safekeeping as DBP even claims that the shares were transferred to the APT (now PMO). In fine, there is no reason whatsoever for DBP to continue in the possession of the shares of stock against Medrano. For nearly 30 years, Medrano was deprived of his shares without any compensation at all from DBP. To this Court, such situation is tantamount to the loss of respondent's shares of stock, by reason of DBP's unjustified retention.

As to the issue of attorney's fees, it is well settled that the law allows the courts discretion as to the determination of whether or not attorney's fees are appropriate. The surrounding circumstances of each case are to be considered

in order to determine if such fees are to be awarded. In the case of *Servicewide Specialists, Incorporated v. Court of Appeals*,^[18] the Court ruled:

Article 2208 of the Civil Code allows attorney's fees to be awarded by a court when its claimant is compelled to litigate with third persons or to incur expenses to protect his interest by reason of an unjustified act or omission on the part of the party from whom it is sought....

In the present case, it is clear that Medrano was constrained to use legal means to recover his shares of stock. Records showed that indeed respondent Medrano followed up^[19] the payment of his shares of stock that were transferred to DBP. After some time, he became convinced that DBP will not pay for the shares of stock for reasons unknown to him. That was when he decided to bring the matter to court.

DBP's unjustified refusal to pay for the shares or even offer an explanation to Medrano why payment was being withheld indicates bad faith on its part. Besides having no legal or just reason to hold on to Medrano's shares of stock, DBP also refused to enlighten Medrano of the reason why he was being denied payment. Further, Medrano's failure to comply with the conditions of the acceptance should have prompted DBP either to return the shares of Medrano or accept the shares of Medrano as a sale and pay a fair price or at least communicate to Medrano why his shares were being withheld. Instead, DBP did nothing but to hold on to the shares. Because of this, Medrano was left with no other option but to seek redress from the courts.

WHEREFORE, the Decision dated December 14, 2004 and Resolution dated February 8, 2005 of the Court of Appeals in CA-G.R. CV No. 65436 are hereby AFFIRMED.

No pronouncement as to costs.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Bersamin, and Sereno, JJ., concur.

[1] Rollo, pp. 51-56. Penned by Associate Justice Jose Catral Mendoza (now a member of this Court) with Associate Justices Godardo A. Jacinto and Edgardo P. Cruz concurring.

[2][]Id. at 58-59.

[3] Id. at 101-106.

[4] TSN, June 16, 1983, pp. 10-13, 30.

[5] Rollo, pp. 105-106.

[6] CA rollo, p. 100.

[7] Supra note 1.

[8] ART. 1545. Where the obligation of either party to a contract of sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first mentioned party may also treat the nonperformance of the condition as a breach of warranty.

Where the ownership in the things has not passed, the buyer may treat the fulfillment by the seller of his obligation to deliver the same as described and as warranted expressly or by implication in the contract of sale as a condition of the obligation of the buyer to perform his promise to accept and pay for the thing.

[9] ART. 1385. Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore.

Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith.

In this case, indemnity for damages may be demanded from the person causing the loss.

[10] Supra note 2.

[11] Id. at 34.

[12] Id. at 36-37.

[13] Art. 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.

From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts.

[14] G.R. No. 174286, June 5, 2009, 588 SCRA 690, 701, 703.

[15] G.R. No. 166862, December 20, 2006, 511 SCRA 444, 465-466, citing *Logan v. Philippine Acetylene Co.*, 33 Phil. 177, 183-184 (1916) and *ABS-CBN Broadcasting Corporation v. Court of Appeals*, G.R. No. 128690, January 21, 1999, 301 SCRA 572, 592-593.

[16] TSN, June 16, 1983, pp. 22-25.

[17] G.R. No. 138088, January 23, 2006, 479 SCRA 404, 412, citing *Reyes v. Lim*, G.R. No. 134241, August 11, 2003, 408 SCRA 560 and 1 J. Vitug, *Civil Law* 30 (2003).

[18] G.R. No. 110597, May 8, 1996, 256 SCRA 649, 655, citing *Gonzales v. National Housing Corporation*, No. L-50092, December 18, 1979, 94 SCRA 786.

[19] TSN, June 16, 1983, p. 24.

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