

**ASSET PRIVATIZATION TRUST, PETITIONER, VS. T.J. ENTERPRISES,
RESPONDENT.D E C I S I O N***G.R. No. 167195. May 08, 2009*

Ponente: TINGA, J.

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This is a Rule 45 petition[1] which seeks the reversal of the Court of Appeals' decision[2] and resolution[3] affirming the RTC's decision[4] holding petitioner liable for actual damages for breach of contract.

Petitioner Asset Privatization Trust[5] (petitioner) was a government entity created for the purpose to conserve, to provisionally manage and to dispose assets of government institutions.[6] Petitioner had acquired from the Development Bank of the Philippines (DBP) assets consisting of machinery and refrigeration equipment which were then stored at Golden City compound, Pasay City. The compound was then leased to and in the physical possession of Creative Lines, Inc., (Creative Lines). These assets were being sold on an as-is-where-is basis.

On 7 November 1990, petitioner and respondent entered into an absolute deed of sale over certain machinery and refrigeration equipment identified as Lots Nos. 2, 3 and 5. Respondent paid the full amount of P84,000.00 as evidenced by petitioner's Receipt No. 12844. After two (2) days, respondent demanded the delivery of the machinery it had purchased. Sometime in March 1991, petitioner issued Gate Pass No. 4955. Respondent was able to pull out from the compound the properties designated as Lots Nos. 3 and 5. However, during the hauling of Lot No. 2 consisting of sixteen (16) items, only nine (9) items were pulled out by respondent. The seven (7) items that were left behind consisted of the following: (1) one (1) Reefer Unit 1; (2) one (1) Reefer Unit 2; (3) one (1) Reefer Unit 3; (4) one (1) unit blast freezer with all accessories; (5) one (1) unit chest freezer; (6) one (1) unit room air-conditioner; and (7) one (1) unit air compressor. Creative Lines' employees prevented respondent from hauling the remaining machinery and equipment.

Respondent filed a complaint for specific performance and damages against petitioner and Creative Lines.[7] During the pendency of the case, respondent was able to pull out the remaining machinery and equipment. However, upon inspection it was discovered that the machinery and equipment were damaged and had missing parts.

Petitioner argued that upon the execution of the deed of sale it had complied with its obligation to deliver the object of the sale since there was no stipulation to the contrary. It further argued that being a sale on an as-is-where-is basis, it was the duty of respondent to take possession of the property. Petitioner claimed that there was already a constructive delivery of the machinery and equipment.

The RTC ruled that the execution of the deed of absolute sale did not result in constructive delivery of the machinery and equipment. It found that at the time of the sale, petitioner did not have control over the machinery and equipment and, thus, could not have transferred ownership by constructive delivery. The RTC ruled that petitioner is liable for breach of contract and should pay for the actual damages suffered by respondent.

On petitioner's appeal, the Court of Appeals affirmed in toto the decision of the RTC.

Hence this petition.

Before this Court, petitioner raises issues by attributing the following errors to the Court of Appeals, to wit:

I.

The Court of Appeals erred in not finding that petitioner had complied with its obligation to make delivery of the properties subject of the contract of sale.

II.

The Court of Appeals erred in not considering that the sale was on an "as-is-where-is" basis wherein the properties were sold in the condition and in the place where they were located.

III.

The Court of Appeals erred in not considering that respondent's acceptance of petitioner's disclaimer of warranty forecloses respondent's legal basis to enforce any right arising from the contract.

IV.

The reason for the failure to make actual delivery of the properties was not attributable to the fault and was beyond the control of petitioner. The claim for damages against petitioner is therefore bereft of legal basis.[8]

The first issue hinges on the determination of whether there was a constructive delivery of the machinery and equipment upon the execution of the deed of absolute sale between petitioner and respondent.

The ownership of a thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof.[9] The thing sold shall be understood as delivered when it is placed in the control and possession of the vendee.[10]

As a general rule, when the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred. And with regard to movable property, its delivery may also be made by the delivery of the keys of the place or depository where it is stored or kept.[11] In order for the execution of a public instrument to effect tradition, the purchaser must be placed in control of the thing sold.[12]

However, the execution of a public instrument only gives rise to a prima facie presumption of delivery. Such presumption is destroyed when the delivery is not effected because of a legal impediment.[13] It is necessary that the vendor shall have control over the thing sold that, at the moment of sale, its material delivery could have been made.[14] Thus, a person who does not have actual possession of the thing sold cannot transfer constructive possession by the execution and delivery of a public instrument.[15]

In this case, there was no constructive delivery of the machinery and equipment upon the execution of the deed of absolute sale or upon the issuance of the gate pass since it was not petitioner but Creative Lines which had actual possession of the property. The presumption of constructive delivery is not applicable as it has to yield to the reality that the purchaser was not placed in possession and control of the property.

On the second issue, petitioner posits that the sale being in an as-is-where-is basis, respondent agreed to take possession of the things sold in the condition where they are found and from the place where they are located. The phrase as-is where-is basis pertains solely to the physical condition of the thing sold, not to its legal situation.[16] It is merely descriptive of the state of the thing sold. Thus, the as-is where-is basis merely describes the actual

state and location of the machinery and equipment sold by petitioner to respondent. The depiction does not alter petitioner's responsibility to deliver the property to respondent.

Anent the third issue, petitioner maintains that the presence of the disclaimer of warranty in the deed of absolute sale absolves it from all warranties, implied or otherwise. The position is untenable.

The vendor is bound to transfer the ownership of and deliver, as well as warrant the thing which is the object of the sale.[17] Ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in articles 1497 to 1501, or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee.[18] A perusal of the deed of absolute sale shows that both the vendor and the vendee represented and warranted to each other that each had all the requisite power and authority to enter into the deed of absolute sale and that they shall

perform each of their respective obligations under the deed of absolute in accordance with the terms thereof.[19] As previously shown, there was no actual or constructive delivery of the things sold. Thus, petitioner has not performed its obligation to transfer ownership and possession of the things sold to respondent.

As to the last issue, petitioner claims that its failure to make actual delivery was beyond its control. It posits that the refusal of Creative Lines to allow the hauling of the machinery and equipment was unforeseen and constituted a fortuitous event.

The matter of fortuitous events is governed by Art. 1174 of the Civil Code which provides that except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires assumption of risk, no person shall be responsible for those events which could not be foreseen, or which though foreseen, were inevitable. The elements of a fortuitous event are: (a) the cause of the unforeseen and unexpected occurrence, must have been independent of human will; (b) the event that constituted the *caso fortuito* must have been impossible to foresee or, if foreseeable, impossible to avoid; (c) the occurrence must have been such as to render it impossible for the debtors to fulfill their obligation in a normal manner, and; (d) the obligor must have been free from any participation in the aggravation of the resulting injury to the creditor.[20]

A fortuitous event may either be an act of God, or natural occurrences such as floods or typhoons, or an act of man such as riots, strikes or wars.[21] However, when the loss is found to be partly the result of a person's participation—whether by active intervention, neglect or failure to act—the whole occurrence is humanized and removed from the rules applicable to a fortuitous event.[22]

We quote with approval the following findings of the Court of Appeals, to wit:

We find that Creative Lines' refusal to surrender the property to the vendee does not constitute force majeure which exculpates APT from the payment of damages. This event cannot be considered unavoidable or unforeseen. APT knew for a fact that the properties to be sold were housed in the premises leased by Creative Lines. It should have made arrangements with Creative Lines beforehand for the smooth and orderly removal of the equipment. The principle embodied in the act of God doctrine strictly requires that the act must be one occasioned exclusively by the violence of nature and all human agencies are to be excluded from creating or entering into the cause of the mischief. When the effect, the cause of which is to be considered, is found to be in part the result of the participation of man, whether it be from active intervention or neglect, or failure to act, the whole occurrence is thereby humanized, as it were, and removed from the rules applicable to the acts of God.[23]

Moreover, Art. 1504 of the Civil Code provides that where actual delivery has been delayed through the fault of either the buyer or seller the goods are at the risk of the party in fault. The risk of loss or deterioration of the

goods sold does not pass to the buyer until there is actual or constructive delivery thereof. As previously discussed, there was no actual or constructive delivery of the machinery and equipment. Thus, the risk of loss or deterioration of property is borne by petitioner. Thus, it should be liable for the damages that may arise from the delay.

Assuming arguendo that Creative Lines' refusal to allow the hauling of the machinery and equipment is a fortuitous event, petitioner will still be liable for damages. This Court agrees with the appellate court's findings on the matter of damages, thus:

Article 1170 of the Civil Code states: "Those who in the performance of their obligations are guilty of fraud, negligence, or delay and those who in any manner contravene the tenor thereof are liable for damages." In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.[24] The trial court correctly awarded actual damages as pleaded and proven during trial.[25]

WHEREFORE, the Court AFFIRMS in toto the Decision of the Court of Appeals dated 31 August 2004. Cost against petitioner.

SO ORDERED.

Carpio-Morales,[*] (Acting Chairperson), Velasco, Jr., Leonardo-De Castro,**] and Brion, JJ., concur.

[*] Acting Chairperson in lieu of Senior Associate Justice Leonardo Quisumbing, who is on official leave per Special Order No. 618.

**] Designated as an additional member of the Second Division in lieu of Senior Associate Justice Leonardo Quisumbing, who is on official leave, per Special Order No. 619.

[1] Rollo, pp. 27-64.

[2] Dated 31 August 2004. Penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Romeo A. Brawner and Mariano C. Del Castillo; Id. at 14-24.

[3] Dated 17 February 2005. Penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Romeo A. Brawner and Mariano C. Del Castillo. Id. at 11-13

[4] Dated 21 September 1998. Penned by Judge Francisco B. Ibay; Id. at 79-86.

[5] R.A. No. 7886 extended the term of APT up to December 31, 1999.

[6] Proclamation No. 50, Sec. 9

Sec. 9.Creation.—There is hereby created a public trust to be known as the Asset Privatization Trust, hereinafter referred to as the Trust, which shall, for the benefit of the National Government, take title to and possession of, conserve, provisionally manage and dispose the assets as defined in Section 2 herein which have been identified for privatization or disposition and transferred to the Trust for the purpose, pursuant to Section 23 of this Proclamation.

[7] Records, pp. 1-5.

[8] Rollo, pp. 40-41.

- [9] CIVIL CODE, Art. 1477.
- [10] CIVIL CODE, Art. 1497.
- [11] CIVIL CODE, Art. 1498.
- [12] Santos v. Santos, 418 Phil. 681, 690-691 (2001), citing Danguilan v. IAC 168 SCRA 22.
- [13] Ten Forty Realty and Development Corp. v. Cruz, 457 Phil. 603, citing Equatorial Realty Development Inc. v. Mayfair Theater, Inc., 370 SCRA 56, November 21, 2001.
- [14] BAVIERA, ARACELI. SALES. U.P. Law Complex ©2005 p. 67.
- [15] Id. citing Masallo v. Cesar, 39 Phil. 134 (1918).
- [16] National Development Company v. Madrigal Wan Hai Lines Corporation, 458 Phil. 1038, 1054 (2003).
- [17] CIVIL CODE, Art. 1495.
- [18] CIVIL CODE, Art. 1496.
- [19] Item no. 2 of the terms and conditions of the Deed of Absolute Sale. C.A. Records p. 525.
- [20] Lea Mer Industries, Inc. v. Malayan Insurance Co., Inc. G.R. No. 161745, 30 September 2005, 471 SCRA 698,708 citing Mindex Resources Development v. Morillo, 428 Phil. 934, 944; Philippine American General Insurance Co., Inc. v. MGG Marine Services, Inc., 428 Phil. 705,714; Metal Forming Corp. v. Office of the President, 317 Phil.853, 859; Vasquez v. Court of Appeals, 138 SCRA 553, 557, September 13, 1985; Republic v. Luzon Stevedoring Corp., 128 Phil. 313, 318.
- [21] Philippine Communications Satellite Corporation v. Globe Telecom, Inc. G.R. Nos. 147324 and 147334, 25 May 2005, 429 SCRA153,163.
- [22] Sicam v. Jorge, G.R. No. 159617, 8 August 2007, 529 SCRA 443, 460, citing Mindex v. Resources Development Corporation v. Morillo, 482 Phil. 934, 944.
- [23] Rollo, pp. 21-22, citing National Power Corporation v. Court of Appeals, 222 SCRA 415.
- [24] CIVIL CODE, Art. 2201.
- [25] Rollo. pp. 22-23.

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