

88 MART DUTY FREE, INC., PETITIONER, VS. FERNANDO U. JUAN AS HEREIN REPRESENTED BY EDUARDO A. GONZALES, RESPONDENT.

G.R. No. 167357. November 25, 2008

Ponente: CORONA, J.

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CORONA, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court seeks to set aside the March 11, 2005 decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 72913.

In June 1, 1995, petitioner 88 Mart Duty Free, Inc.'s chief executive officer and general manager, Jean Lui, met respondent Fernando U. Juan at the latter's restaurant[2] in Subic. They got to talking about business matters. Lui manifested interest in the contents of a container van (consisting of assorted imported food items and other non-perishable goods owned by respondent) as these were items which Lui was selling at the 88 Mart. Subsequently, Lui agreed to purchase the whole shipment for US\$39,165.

That same day, respondent delivered to David Manalo, Lui's employee, the invoices, complete shipping documents and packing list covering the items.

Thereafter, the shipment was transferred in the name of petitioner, as per letter of SBMA[3] Port Authority Officer-in-Charge Ferdinand L. Hernandez, addressed to Commissioner of Customs Guillermo L. Parayno. The declaration of admission issued by the SBMA Port Authority also showed that petitioner applied for the shipment's entry into the SBMA.

After several days, respondent, through counsel, sent a letter to petitioner demanding payment of the purchase price agreed upon. Despite receipt thereof, petitioner refused to settle its obligations with respondent.

Respondent then instituted a complaint for sum of money and damages with a prayer for the issuance of a writ of preliminary attachment against petitioner and Lui in the Regional Trial Court (RTC) of Olongapo City, Branch 75.[4]

Petitioner and Lui denied that there was a perfected contract of sale between the parties. Lui claimed that he manifested interest in only some of the items offered by respondent, namely the Kool Aid and Vanilla Flintstones Cookies. However, he told respondent that he would purchase those items subject to verification on the competitiveness of respondent's price list and the condition of the goods. Upon Lui's discovery that his other suppliers quoted lower prices for the same items, he told Manalo to inform respondent that they were no longer interested in buying the goods. According to Lui, respondent even signified his assent to their withdrawal from the transaction by personally retrieving all the documents pertaining thereto.

Petitioner and Lui sought to justify the turnover of the documents covering the goods to them as having been made in pursuance of an arrangement between the parties. They explained that said documents were delivered to them as Lui agreed to assist and accommodate respondent in securing the required import permit. This was because petitioner was authorized by the SBMA rules to import the subject shipment, tax- and duty-free.

Respondent, on the other hand, was not. According to petitioner and Lui, respondent merely used petitioner's name to facilitate the release of the container van to enable Lui to see and inspect the contents thereof before deciding on whether or not to purchase the goods.

During the course of the trial, the RTC granted several applications and/or motions filed by respondent, one of which ordered the issuance of a writ of preliminary attachment against petitioner's movable properties. Another RTC order allowed respondent to sell the perishable goods at public auction. During the public auction, the highest winning bid for the items fetched P165,000.

After trial on the merits, the court a quo ruled in respondent's favor. It held that there was a perfected contract of sale entered into between the parties. It also found that the contract was not subject to a suspensive condition. It reasoned that, if there really was such a condition, why then did Lui allow the goods to be declared in petitioner's name even before he could determine the competitiveness of respondent's prices vis-à-vis the prices offered by their other suppliers? Furthermore, Lui's proffered theory of accommodation was lame. It was inconceivable that an astute businessman like him would readily accede to such an arrangement with a stranger.

The RTC, however, concluded that his failure to abide by the contract was only because he belatedly realized that he could not make any profit after comparing prices with his regular suppliers. Thus, it refused to award moral and exemplary damages to respondent as fraud was not established. Lastly, it held petitioner and Lui solidarily liable for the obligation.

Petitioner and Lui moved for reconsideration. It was denied.

On appeal, the CA affirmed the RTC's decision with modifications. The appellate court held that the turn-over of the documents constituted a constructive delivery to petitioner of the goods subject of the sale and a transfer to it of the ownership over said goods. With the delivery of the goods, petitioner was bound to pay the purchase price thereof. The CA also found that the RTC properly issued the writ of preliminary attachment. According to the appellate court, the grounds relied upon by the party seeking the issuance of said writ need not be proved as it may be sought and issued ex parte.

However, the CA stated that Lui could not be held solidarily liable with petitioner as there was no showing that the former, as a corporate officer, acted in bad faith or with gross or inexcusable negligence or that he acted outside the scope of his authority in dealing with respondent. Furthermore, petitioner could not be made to pay the entire purchase price as respondent was able to resell some of the goods at public sale for P165,000. Thus, he could hold petitioner liable only for the deficiency.

Hence, this petition.

The issues before us are: (1) whether or not there was a perfected contract of sale and (2) whether or not the issuance of the writ of preliminary attachment by the RTC was proper.

The petition is partly meritorious.

On the first issue, petitioner is clearly asking us to consider a question of fact that had already been raised in and satisfactorily established by the RTC and the CA. Time and again, we have held that the jurisdiction of this Court in a petition for review on certiorari under Rule 45 is limited only to questions of law, save for certain exceptions,[5] none of which is present in this case.

Petitioner tried to make it appear that the issue pertaining to the contract of sale came within the purview of the exceptions to the general rule by alleging that the lower courts "overlooked certain facts, which, if properly considered, (would) justify a different conclusion." [6] However, a perusal of the petition reveals that it was not so

much about certain facts being "overlooked" as it was about both courts' decision to give credence to respondent's version of the facts.

Both the RTC and the CA competently ruled on the issue of perfection of the contract of sale as they properly laid down both the factual and legal bases for their respective decisions. Thus, we see no reason to disturb their findings on the existence of a perfected contract of sale.

However, on the alleged impropriety of the issuance of the writ of preliminary attachment, the CA erred in holding that it was properly issued. Although this matter could be considered a question of fact, it, however, fell within the exceptions to the general rule. The inference of the CA was manifestly mistaken.

We find nothing in the RTC and CA decisions that justified the issuance of the writ of attachment.[7] In fact, both the RTC and the CA ruled in their respective decisions[8] that there was no fraud on petitioner's part in incurring the obligation or in the performance thereof. As such, petitioner's liability was predicated only on the non-fulfillment of its obligation under the contract of sale. Thus, the only logical conclusion that can be drawn is that the same was improperly issued.[9]

It must be noted that petitioner filed a supplemental reply and omnibus motion with leave of court to discharge the preliminary attachment in this Court. With our finding that the assailed writ was improperly issued, we thereby grant petitioner's motion to discharge the same.

WHEREFORE, the petition is partly GRANTED. The March 11, 2005 decision of the Court of Appeals in CA-G.R. CV No. 72913 which affirmed the decision of the Regional Trial Court is AFFIRMED WITH MODIFICATION in that the writ of preliminary attachment issued by the Regional Trial Court is hereby declared improper. Accordingly, the said writ of preliminary attachment is hereby DISCHARGED but all other aspects of the CA decision are AFFIRMED.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio, Azcuna, and Tinga, JJ.,[*] concur.

* As replacement of Justice Teresita J. Leonardo-De Castro who is on official leave per Special Order No. 539.

[1] Penned by Associate Justice Perlita J. Tria Tirona (retired) and concurred in by Associate Justices Delilah Vidallon-Magtolis (retired) and Jose C. Reyes, Jr. of the Fourth Division of the Court of Appeals. Rollo, pp. 60-87.

[2] Nino Di Roma Restaurant.

[3] Subic Bay Metropolitan Authority.

[4] It was docketed as Civil Case No. 307-0-95. Rollo, pp. 101-107.

In support of his application for the issuance of a writ of preliminary attachment, respondent alleged in his complaint:

"19. That the defendants are liable jointly and severally for the actual loss and damages as prayed for in the instant action;

20. That the defendants are removing their property and/or disposing of their properties with intent to defraud herein plaintiff;

21. That likewise defendants are guilty of fraud in contracting the obligation and concealing its conversion for its personal gain;

22. That there is sufficient cause of action against the defendants to warrant the issuance of a writ of preliminary attachment;

23. That in order to prevent this action to become moot and academic and/or nugatory by the fact that the defendants are removing their properties, concealing and/or disposing of their properties, it is imperative that a writ of preliminary attachment be issued at the commencement of this action to act as security for the satisfaction of any judgment that may be rendered in the above-entitled case."

[5]B & I Realty Co., Inc. v. Spouses Caspe, G.R. No. 146972, 29 January 2008.

[6] See Baricuatro v. CA., 382 Phil. 15, 24 (2000).

[7] The following are the grounds for the issuance of a writ of preliminary attachment:

SECTION 1. Grounds upon which attachment may issue. - At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

(a)

In an action for the recovery of a specified amount of money or damages, other than moral and exemplary, on a cause of action arising from law, contract, quasi-contract, delict or quasi-delict against a party who is about to depart from the Philippines with intent to defraud his creditors;

(b)

In an action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;

(c)

In an action to recover the possession of property unjustly or fraudulently taken, detained or converted, when the property, or any part thereof, has been concealed, removed, or disposed of to prevent its being found or taken by the applicant or an authorized person;

(d) In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof;

(e)

In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors; or

(f)

In an action against a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication.

[8]The RTC held:

x x x The existence of an alleged fraud in the transaction must be proved. It cannot be assumed. At most, the defendant Lui made a bad business judgment[,] hence, his refusal to pay the purchase price. x x x Rollo, pp.

88-94.

The CA impliedly agreed with the above finding of the RTC when, in its decision, it stated that it was affirming the factual findings of the RTC, except as to the latter's findings on petitioner and Lui's solidary liability to respondent and the amount of said liability. Furthermore, the CA even went on to state that respondent failed to prove his allegations (of fraud) in his application for issuance of the writ of preliminary attachment. Despite this declaration, the appellate court still held that such failure did not render the issuance of the writ improper.

[9] See *Philippine National Construction Corporation v. Dy*, G.R. No. 156887, 3 October 2005, 472 SCRA 1; *Chiudian v. Sandiganbayan*, G.R. No. 139941, 19 January 2001, 349 SCRA 745; and *Uy v. CA*, G.R. No. 95550, 23 November 1992, 215 SCRA 859.

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