

S.V. MORE PHARMA CORPORATION AND ALBERTO A. SANTILLANA, PETITIONERS, VS. DRUGMAKERS LABORATORIES, INC. AND ELIEZER DEL MUNDO, RESPONDENTS.

G.R. No. 200408. November 12, 2014

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Before the Court are consolidated petitions for review on certiorari[1] assailing the Decision[2] dated August 5, 2011 and the Resolution[3] dated January 27, 2012 of the Court of Appeals (CA) in CA-G.R. CV No. 81812, which affirmed with modification the Decision[4] dated September 13, 2002 of the Regional Trial Court of Quezon City, Branch 224 (RTC) in Civil Case No. Q-95-23087, finding petitioners S.V. More Pharma Corporation (S.V. More) and Alberto A. Santillana (Alberto) to have breached their contract with respondents Drugmakers Laboratories, Inc. (Drugmakers) and Eliezer V. Del Mundo (Eliezer), and, thus, liable for damages.

The Facts

Eliezer, Evangeline C. Del Mundo, and Atty. Quirico T. Carag (Atty. Carag) (Del Mundo Group) are the registered owners of fifty percent (50%) (i.e., 250,000 shares of stock) of E.A. Northam Pharma Corporation (E.A. Northam), a domestic corporation which exclusively distributes and markets 28 various pharmaceutical products[5] that are exclusively manufactured by Drugmakers, a domestic corporation under the control of Eliezer.[6] The remaining fifty percent (50%) in E.A. Northam are owned by Alberto and Nilo S. Valente (Santillana Group).[7] In an Agreement[8] dated May 31, 1993, the Del Mundo Group agreed to cede all their rights and interests in E.A. Northam in favor of the Santillana Group for a consideration of P4,200,000.00.[9] However, it was agreed therein that: (a) the said pharmaceutical products shall remain jointly owned by Eliezer/Drugmakers and Alberto; (b) the products shall be exclusively manufactured by Drugmakers as long as Eliezer maintains majority ownership and control of the said company; and (c) the products will be sold, conveyed, and transferred to S.V. More, provided that Alberto remains its chief executive officer with majority ownership and control thereof.[10]

On even date, E.A. Northam entered into a Deed of Sale/Assignment[11] with S.V. More, whereby E.A. Northam agreed to convey, transfer, and assign all its rights over 28 pharmaceutical products in favor of S.V. More which shall then have the right to have them sold, distributed, and marketed in the latter's name, subject to the condition that such pharmaceutical products will be exclusively manufactured by Drugmakers based on their existing Contract Manufacturing Agreement[12] (CMA) set to expire in October 1993.[13]

In September 1993, or a month prior to the expiration of the CMA, Drugmakers proposed a new manufacturing agreement[14] which S.V. More found unacceptable.[15] In a letter dated October 20, 1993, S.V. More, for the purpose of renewing its License to Operate with the Bureau of Food and Drug (BFAD), requested a copy of the existing CMA from Drugmakers, but to no avail.[16] Hence, on October 23, 1993, S.V. More entered into a Contract to Manufacture Pharmaceutical Products[17] (CMPP) with Hizon Laboratories, Inc. (Hizon

Laboratories), and, thereafter, caused the latter to manufacture some of the pharmaceutical products[18] covered by the Deed of Sale/Assignment.[19] Meanwhile, the BFAD issued the corresponding Certificates of Product Registration[20] (CPR) therefor, with S.V. More as distributor, and Hizon Laboratories as manufacturer.[21]

On February 23, 1995, and after their protest[22] on the new registration went unheeded,[23] Drugmakers and Eliezer (respondents) filed a Complaint[24] for Breach of Contract, Damages, and Injunction with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order against S.V. More and Alberto (petitioners), and Hizon Laboratories, and its President, Rafael H. Hizon, Jr. (Rafael), before the RTC,[25] docketed as Civil Case No. Q-95-23087.

In their defense,[26] petitioners denied any liability, alleging, among others, that the Deed of Sale/Assignment failed to state the true intention of the parties as a result of the surreptitious insertions by Atty. Carag of certain provisions which were never agreed upon by the parties. Further, petitioners maintained that they did not violate the stipulation in the Deed of Sale/Assignment regarding the continuous manufacture of the subject pharmaceutical products by Drugmakers because: (a) said stipulation did not confer to Drugmakers the exclusive right to manufacture the said products; (b) S.V. More's compliance with the stipulation became impossible or difficult as Drugmakers itself refused to enter into a new manufacturing agreement; (c) there is no stipulation pour autrui as no unconditional benefit was granted to Drugmakers; and (d) any benefit granted to the latter is merely co-terminus with the existing manufacturing agreement that had already expired on October 30, 1993.[27]

For their part, Hizon Laboratories and Rafael, while admitting that they manufactured the disputed products, alleged that there is no contractual relation between them and respondents; hence, they cannot be bound by the terms and conditions of the Agreement and the Deed of Sale/Assignment. Neither were they proper parties to the instant case.[28]

The RTC Ruling

In a Decision[29] dated September 13, 2002, the RTC ruled in favor of respondents, and accordingly ordered petitioners, Hizon Laboratories and Rafael, to jointly and severally pay Drugmakers the following amounts: (a) P6,000,000.00 as actual damages representing loss of income and/or loss of business opportunity; (b) P500,000.00 as moral damages; (c) P100,000.00 as exemplary damages; (d) P250,000.00 as attorney's fees; and (e) costs of suit.[30]

It found that both the Agreement and the Deed of Sale/Assignment explicitly provided that Drugmakers had the right to exclusively manufacture the subject 28 pharmaceutical products; thus, the act of S.V. More in contracting with Hizon Laboratories to manufacture some of the said products constituted a clear violation of their contractual obligations for which they are liable for damages.[31] Moreover, it disregarded petitioners' claim that Atty. Carag surreptitiously inserted certain gratuitous provisions into the subject contracts for being unsubstantiated in the light of Alberto's admission that he prepared the draft of the Agreement and had read the Agreement and Deed of Sale/Assignment before signing the same.[32] Being aware of the fact that petitioners are legally obliged to maintain Drugmakers as the sole and exclusive manufacturer of the subject pharmaceutical products, the RTC declared Hizon Laboratories and Rafael guilty of bad faith in agreeing to manufacture at least six (6) of them, hence, liable for damages together with petitioners.[33]

On October 8, 2002, petitioners moved for reconsideration,[34] while on October 10, 2002, Hizon Laboratories and Rafael filed their Notice of Appeal.[35]

In an Order[36] dated August 11, 2003, the RTC denied petitioners' motion for reconsideration, prompting them to file an appeal. Meanwhile, in the same Order, the RTC gave due course to the Notice of Appeal filed by Hizon

Laboratories and Rafael.

The CA Ruling

In a Decision[37] dated August 5, 2011, the CA affirmed the RTC Ruling with modifications in that: (a) it deleted the award for moral and exemplary damages; and (b) it absolved Rafael and Hizon Laboratories from any liability.

It found that petitioners indeed breached their contractual obligation when they entered into another manufacturing agreement with Hizon Laboratories, and its owner, Rafael, instead of availing of the option under the Agreement to invalidate the same when Drugmakers failed to provide them with a copy of the manufacturing agreement for the renewal of the license to operate.[38] Hence, respondents are entitled to be paid actual damages representing unrealized profits,[39] attorney's fees, and costs of suit.[40] The CA, however, decreed that since Drugmakers is a juridical entity, it is not therefore entitled to moral and exemplary damages. [41]

Further, the CA absolved Hizon Laboratories and Rafael from any liability as they were not parties to the Agreement and Deed of Sale/Assignment nor can they be faulted for manufacturing the pharmaceutical products because their actions were only the direct consequences of petitioners' breach of their obligations.[42]

Aggrieved, petitioners filed the following: (a) a Motion for Reconsideration[43] and (b) Supplement to the Motion for Reconsideration,[44] and (c) another Motion for Reconsideration[45] through another counsel, all of which were denied in a Resolution[46] dated January 27, 2012. Hence, petitioners filed the herein consolidated petitions on March 27, 2012 (G.R. No. 200408)[47] and February 21, 2012 (G.R. No. 200416).[48]

The Issue Before the Court

The primordial issue for the Court's resolution is whether or not the CA correctly affirmed petitioners' liability for breach of contract.

The Court's Ruling

The consolidated petitions are partly meritorious.

The existence of contractual breach in this case revolves around the exclusive status of Drugmakers as the manufacturer of the subject pharmaceutical products which was stipulated and, hence, recognized under the following contracts: (a) the CMA dated October 30, 1992 between Drugmakers, as manufacturer, and S.V. More, as the holder of the CPR covering the pharmaceutical products; (b) the Agreement dated May 31, 1993 covering the change in ownership in E.A. Northam, or the distributor of the pharmaceutical products manufactured by Drugmakers and covered by S.V. More's CPR; and (c) the Deed of Sale/Assignment of even date between E.A. Northam and S.V. More, whereby the former's distributorship rights were transferred to the latter.

In particular, the CMA states that Drugmakers, being the exclusive manufacturer of the subject pharmaceutical products, had to first give its written consent before S.V. More could contract the services of another manufacturer:

BOTH PARTIES FURTHER AGREE ON THE FOLLOWING

x x x x

3. That [S.V. More], prior to contracting the services of another manufacturer to manufacture and/or repack additional / products, as listed in annex "A" must first secure the written consent of [Drugmakers];

x x x x[49]

In the May 31, 1993 Agreement,[50] the new ownership of E.A. Northam,[51] or the initial distributor of the

same pharmaceutical products, equally recognized Drugmakers's status as exclusive manufacturer, viz.:

It is an essential condition herein that:

(a) All the above-enumerated products will continue to be exclusively manufactured by Drugmakers Laboratories, Inc. so long as Mr. Eliezer V. Del Mundo maintains majority ownership and control of Drugmakers Laboratories, Inc.; x x x

x x x x[52] (Emphasis and underscoring supplied)

The same was echoed in the Deed of Sale/Assignment, wherein S.V. More, being the transferee of E.A. Northam's distributorship rights, agreed to the following:

NOW, THEREFORE, for and in consideration of the foregoing premises, [E.A. Northam] do by these presents hereby convey, transfer, and assign all its rights, title, and interests over the above-stated pharmaceutical products in favor of [S.V. More] who shall henceforth have the right to have the same sold, distributed and marketed in its name with the obligation to have the same manufactured by DRUGMAKERS LABORATORIES, INC. pursuant to the existing Manufacturing Agreement thereunder.[53] (Emphasis and underscoring supplied)

These provisions notwithstanding, records disclose that petitioner S.V. More, through the CMPP and absent the prior written consent of respondent Drugmakers, as represented by its President, respondent Eliezer, contracted the services of Hizon Laboratories to manufacture some of the pharmaceutical products covered by the said contracts. Thus, since the CMPP with Hizon Laboratories was executed on October 23, 1993,[54] or seven (7) days prior to the expiration of the CMA on October 30, 1993, it is clear that S.V. More, as well as its President, petitioner Alberto, who authorized the foregoing, breached the obligation to recognize Drugmakers as exclusive manufacturer, thereby causing prejudice to the latter.

While the CA correctly affirmed the existence of the aforementioned breach, the Court, however, observes that the appellate court's award of actual damages (due to loss of profits) in the amount of P6,000,000.00 was erroneous due to improper factual basis.

Records reveal that in their attempt to prove their claim for loss of profits corresponding to the aforesaid amount, respondents based their computation thereof on a Sales Projection Form[55] for the period November 1993 to February 1995.[56] However, it is readily observable that the breach occurred only for a period of seven (7) days, or from October 23, 1993 until October 30, 1993 – that is, the date when the CMA expired. Notably, the CMA – from which stems S.V. More's obligation to recognize Drugmakers's status as the exclusive manufacturer of the subject pharmaceutical products and which was only carried over in the other two (2) above-discussed contracts – was never renewed by the parties, [57] nor contained an automatic renewal clause, rendering the breach and its concomitant effect, i.e., loss of profits on the part of Drugmakers, only extant for the limited period of, as mentioned, seven (7) days.

Aside from the lack of substantiation as regards the length of time for which supposed profits were lost, it is also evident that only six (6) of the 28 pharmaceutical products[58] were caused by petitioners to be manufactured by Hizon Laboratories.

Since the sales projection on which the CA based its award for actual damages was derived from figures representing the "alleged unregistered or fabricated sales invoices" of E.A. Northam from 1990 to 1993[59] and the "desired profit" of 15-20%,[60] it would therefore be a legal mishap to sustain that award. As case law holds, the amount of loss warranting the grant of actual or compensatory damages must be proved with a reasonable degree of certainty, based on competent proof and the best evidence obtainable by the injured party.[61] The

CA's finding on respondents' supposed loss of profits in the amount of P6,000,000.00 based on the erroneous sales projection hardly meets this requirement. Accordingly, it must be set aside.

Nevertheless, considering that respondents palpably suffered some form of pecuniary loss resulting from petitioners' breach of contract, the Court deems it proper to, instead, award in their favor the sum of P100,000.00 in the form of temperate damages.[62] This course of action is hinged on Article 2224 of the Civil Code which states that "temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty," as in this case.

As a final matter, the Court resolves that the CA did not gravely abuse its discretion in awarding respondents' attorney's fees, it appearing that the latter were compelled to litigate in order to protect their rights and interests in this case,[63] hence, justifying the same.

WHEREFORE, the consolidated petitions are **PARTIALLY GRANTED**. The Decision dated August 5, 2011 and the Resolution dated January 27, 2012 of the Court of Appeals (CA) in CA-G.R. CV No. 81812 are hereby **AFFIRMED** with **MODIFICATION** in that the award of actual damages is **DELETED** for lack of sufficient basis, and, in its stead, petitioners S.V. More Pharma Corporation and Alberto A. Santillana are **ORDERED** to pay respondents Drugmakers Laboratories, Inc. and Eliezer Del Mundo the amount of P100,000.00 as temperate damages. The rest of the assailed CA Decision **STANDS**.

SO ORDERED.

Velasco, Jr.,[*] Leonardo-De Castro, (Acting Chairperson),[**] Del Castillo,[***] and Perez, JJ., concur.

[*] Designated Acting Member per Special Order No. 1870 dated November 4, 2014.

[**] Per Special Order No. 1861 dated November 4, 2014.

[***] Designated Acting Member per Special Order No. 1862 dated November 4, 2014.

[1] Rollo (G.R. No. 200408), pp. 88-132; rollo (G.R. No. 200416), pp. 3-45.

[2] Rollo (G.R. No. 200408), pp. 9-34; rollo (G.R. No. 200416), pp. 114-139. Penned by Associate Justice Agnes Reyes-Carpio with Associate Justices Fernanda Lampas Peralta and Priscilla J. Baltazar-Padilla, concurring.

[3] Rollo (G.R. No. 200408), pp. 36-39; rollo (G.R. No. 200416), pp. 162-165.

[4] Rollo (G.R. No. 200408), pp. 235-246; rollo (G.R. No. 200416), pp. 90-101. Penned by Presiding Judge Emilio L. Leachon, Jr.

[5] See list of 28 pharmaceutical products; rollo (G.R. No. 200408), p. 10; rollo (G.R. No. 200416), p. 115.

[6] Rollo (G.R. No. 200408), pp. 10-11; rollo (G.R. No. 200416), pp. 115-116.

[7] Rollo (G.R. No. 200408), p. 11; rollo (G.R. No. 200416), p. 116.

[8] Records, Vol. I, pp. 20-22.

[9] Rollo (G.R. No. 200408), p. 11; rollo (G.R. No. 200416), p. 116.

[10] Rollo (G.R. No. 200408), p. 19; rollo (G.R. No. 200416), p. 124. See also records, Vol. 1, pp. 21-22.

[11] Records, Vol. I, pp. 23-24.

- [12] CMA dated October 30, 1992. (Id. at 137-141.)
- [13] Rollo (G.R. No. 200408), pp. 11-12; rollo (G.R. No. 200416), pp. 116-117.
- [14] Records, Vol. I, pp. 149-159.
- [15] Rollo (G.R. No. 200408), p. 12; rollo (G.R. No. 200416), p. 117.
- [16] Id.
- [17] Records, Vol. III, pp. 1025-1028.
- [18] See list of various pharmaceutical products; id. at 1025-1026.
- [19] Rollo (G.R. No. 200408), p. 12; rollo (G.R. No. 200416), p. 117.
- [20] Records, Vol. III, pp. 864-874.
- [21] Rollo (G.R. No. 200408), pp. 12-13; rollo (G.R. No. 200416), pp. 117-118.
- [22] Petitioners sent various demand letters, i.e., 1) Letter dated March 15, 1994 addressed to S.V. More (records, Vol. I, pp. 29-30); 2) Letter dated March 15, 1994 addressed to Hizon Laboratories (id. at 35); and 3) letter dated May 5, 1994 addressed to then Director of BFAD Quintin L. Quintanar (id. at 36-42).
- [23] Rollo (G.R. No. 200408), pp. 178-179; rollo (G.R. No. 200416), pp. 56-57.
- [24] Rollo (G.R. No. 200408), pp. 171-186; rollo (G.R. No. 200416), pp. 48-65.
- [25] Rollo (G.R. No. 200408), p. 13; rollo (G.R. No. 200416), p. 118.
- [26] By way of Answer with Counterclaim dated December 21, 1995 filed by S.V. More (rollo [G.R. No. 200408], pp. 228-234) and Answer dated March 20, 1995 filed by Alberto (id. at 210-227).
- [27] Id. at 230-231.
- [28] See Answer dated March 22, 1995; rollo (G.R. No. 200416), pp. 66-71.
- [29] Rollo (G.R. No. 200408), pp. 235-246; rollo (G.R. No. 200416), pp. 90-101.
- [30] Rollo (G.R. No. 200408), p. 246; rollo (G.R. No. 200416), p. 101.
- [31] Rollo (G.R. No. 200408), p. 243; rollo (G.R. No. 200416), p. 98.
- [32] Id.
- [33] See rollo (G.R. No. 200408), pp. 244-245; rollo (G.R. No. 200416), pp. 99-100.
- [34] Rollo (G.R. No. 200408), pp. 247-254; rollo (G.R. No. 200416), pp. 102-109.
- [35] Rollo (G.R. No. 200408), p. 14; rollo (G.R. No. 200416), p. 119.
- [36] Rollo (G.R. No. 200408), pp. 255-257; rollo (G.R. No. 200416), pp. 110-112.
- [37] Rollo (G.R. No. 200408), pp. 9-34; rollo (G.R. No. 200416), pp. 114-139.
- [38] Rollo (G.R. No. 200408), pp. 24-25; rollo (G.R. No. 200416), pp. 129-130.
- [39] Rollo (G.R. No. 200408), pp. 26-27; rollo (G.R. No. 200416), pp. 131-132.
- [40] Rollo (G.R. No. 200408), p. 28; rollo (G.R. No. 200416), p. 133.

- [41] Rollo (G.R. No. 200408), pp. 27-28; rollo (G.R. No. 200416), pp.132-133.
- [42] Rollo (G.R. No. 200408), pp. 31-32; rollo (G.R. No. 200416), pp. 136-137.
- [43] Filed on September 6, 2011. (CA rollo, pp. 413-434.)
- [44] Filed September 21, 2011. (Id. 440-446.)
- [45] Filed on October 12, 2011. (Id. at 480-499.)
- [46] Rollo (G.R. No. 200408), pp. 36-39; rollo (G.R. No. 200416), pp. 162-165.
- [47] Rollo (G.R. No. 200408), p. 88.
- [48] Rollo (G.R. No. 200416), p. 3.
- [49] CMA dated October 30, 1992, Records, Vol. I, pp. 137-141.
- [50] Records, Vol. 1, pp. 20-22.
- [51] It is in this agreement whereby the Del Mundo Group (headed by Eliezer who is the President of Drugmakers) ceded all their rights and interests in E.A. Northam in favor of the Santillana Group (headed by Alberto who is the President of S.V. More).
- [52] Records, Vol. 1, p. 22.
- [53] Id. at 24.
- [54] CMPP dated October 23, 1993, Records, Vol. III, pp. 1025-1028.
- [55] Erroneously titled as “Sales Projection From.” Records, Vol. II, pp. 650-651.
- [56] Rollo (G.R. No. 200408), p. 27; rollo (G.R. No. 200416), p. 132.
- [57] Rollo (G.R. No. 200408), p. 12; rollo (G.R. No. 200416), p. 117.
- [58] Rollo (G.R. No. 200408), p. 286; rollo (G.R. No. 200416), p. 91.
- [59] TSN dated April 23, 1998, pp. 19-24.
- [60] Id. at 25-27.
- [61] Calibre Traders, Inc. v. Bayer Philippines, Inc., G.R. No. 161431, October 13, 2010, 633 SCRA 34, 56.
- [62] See Sime Darby Pilipinas, Inc. v. Mendoza, G.R. No. 202247, June 19, 2013, 699 SCRA 290, 301-302.
- [63] See Maglasang v. Northwestern University, Inc., G.R. No. 188986, March 20, 2013, 694 SCRA 128, 140.

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