

ALFREDO C. RAMOS, PETITIONER, VS. THE HON. COURT OF APPEALS, LOPEZ, LOCSIN, LEDESMA & CO., INC. AND CMS STOCK BROKERAGE INC., RESPONDENTS.

G.R. No. 41295. December 04, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This is a petition for review of the Court of Appeals' decision dated June 5, 1975, affirming (except the awards for damages and attorney's fees) a summary judgment for specific performance promulgated by the Court of First Instance of Rizal in favor of the private respondents.

On August 14 and 26, 1969, CMS Stock Brokerage, Inc. (or CMS) sold to Lopez, Locsin, Ledesma & Co., Inc. (or LLL) on the floor of the Makati Stock Exchange (or MSE) 2,650 shares of Benguet Consolidated Corporation for P297,650 on a delayed delivery basis of 10 to 20 days, evidenced by Exchange Contracts Nos. B--11807 and B-11814 both dated August 14, 1969 and B-13084 dated August 26, 1969. LLL bought the shares for the account of its clients, the third-party defendants, Rene Ledesma, Jose Maria Lopez, Cesar A. Lopez, Jr. and Alfredo Ramos. CMS failed to deliver the shares of stocks within the agreed period, but LLL did not demand delivery.

On January 6, 1970, CMS informed LLL that it would deliver the shares the next day. LLL wrote CMS that it would not accept the shares because its principals had cancelled their orders. In its reply, CMS insisted that LLL take delivery of the Benguet shares.

In CMS's Clearing House Report of January 9, 1970, the disposition of the shares in favor of LLL appeared, but the latter refused to acknowledge receipt of the covering disposal letter. CMS then deposited the letter in the Office of the Exchange Executive Secretary with the notation "Refused acceptance pending decision of the Exchange" (p. 7, Record on Appeal).

When the controversy was submitted to the Board of Governors of the Exchange for determination, the Board issued Resolution No. 523 on August 10, 1970 advising the parties to litigate the matter in court.

Accordingly, CMS filed in the Court of First Instance of Rizal a complaint to compel LLL to accept the Benguet shares, to pay the price of P297,650, as well as P25,000 as attorney's fees and costs. LLL's motion to dismiss the complaint was denied.

On June 17, 1971, LLL filed an answer alleging that CMS was in *pari delicto* for failing to deliver the shares within the stipulated period; that CMS was in estoppel for submitting the dispute to the Board of Governors of the Exchange; and that LLL did not violate the contracts nor the rules and regulations of the Exchange. LLL filed a counterclaim for P25,000 as attorney's fees.

On July 7, 1971, LLL impleaded its four principals: Alfredo Ramos, Jose Ma. Lopez, Rene Ledesma and Cesar Lopez, Jr. as third-party defendants. With respect to Ramos, LLL alleged that as a result of CMS's failure to deliver the shares within the agreed time frame, Ramos cancelled his order, disauthorized LLL from accepting a

subsequent delivery by CMS, and agreed to hold LLL free from any liability for his non-acceptance of the shares.

Answering LLL's third-party complaint, Ramos averred that he was justified in cancelling his order because both CMS and LLL defaulted in delivering the shares to him. He also alleged that the rules and regulations of the Exchange did not apply to him for he is not a member of the Exchange; that as CMS had no cause of action against LLL, neither did LLL have a cause of action against him; and that CMS and LLL were in *pari delicto*, have no right of recourse against each other, hence, LLL also has no right of action against him. Finally, Ramos alleged that the shares were ordered by the Alakor Corporation of which he is only the Vice-President and Treasurer, so he is not personally liable on the transaction.

On June 7, 1972, CMS filed a motion for summary judgment. LLL and the third-party defendants separately opposed the motion. On August 10, 1972, the trial court rendered a summary judgment disposing as follows:

"WHEREFORE, this Court hereby renders judgment as follows:

"1. In favor of plaintiff on its complaint as follows:

'(a) Compelling defendant Lopez, Locsin, Ledesma & Co., Inc. to accept delivery from plaintiff of the 2,650 shares of Benguet Consolidated covered by the latter's disposal letter of January 9, 1970 and to pay plaintiff the amount of P297,650.00 representing the total price for which defendant purchased the said shares on the trading floor of the Makati Stock Exchange on August 14 and 26, 1969, plus legal interest thereon from the date of extrajudicial demand on January 9, 1970 until the said amount shall have been fully paid, it being understood that the interest due from January 9, 1970 up to the filing of the complaint on March 15, 1971, shall be compounded and shall earn legal interest; and

'(b) Adjudging the defendant to pay plaintiff the amount of P25,000.00 as and for attorney's fees.'

"2. In favor of plaintiff on its counterclaims against the counterclaims of third-party defendants Cesar Lopez, Jr. and Jose Maria Lopez, by condemning them, jointly and severally with the defendant and third-party plaintiff, to pay plaintiff -

'(a) By way of moral damages the amount of P20,000.00;

'(b) By way of exemplary or corrective damages the amount of P50,000.00 as an example or correction for public good; and

'(c) By way of attorney's fees the amount of P5,000.00.'

"3. In favor of the third-party plaintiff and against the third-party defendants on the third-party complaint by -

'(a) Ordering the third-party defendants, pro rata, to reimburse the third-party plaintiff the principal amount of P297,650.00 plus legal interest thereon, referred to in the preceding paragraph 2 of the dispositive portion of this decision which it may have paid to the plaintiff under this judgment; and

'(b) Dismissing the counterclaims of the third-party defendants against the third-party plaintiff for attorney's fees, moral and exemplary damages, and the expenses of litigation.'

"4. The defendant (third-party plaintiff) and the four third-party defendants are jointly and severally liable to payment of attorney's fees, moral and exemplary or corrective damages awarded to plaintiff under this judgment.

"With costs of suit against the defendant." (pp. 72-73, Rollo.)

On appeal (CA-G.R. No. 52432-R), the Court of Appeals affirmed the trial court's decision except the awards for damages and attorney's fees, and remanded the case for the reception of evidence on the plaintiff's claims for damages and attorney's fees. Motions for reconsideration by LLL and the third-party defendants were denied.

In this petition for review, the petitioner alleges that the appellate court erred in rendering a summary judgment, in failing to find that CMS has no right to damages against the petitioner there being no privity of contract between them, and in refusing to exonerate the petitioner from personal liability for the orders he placed with LLL for the account of the Alakor Corporation.

The petition is without merit.

Petitioner's contention that the alleged oversight of CMS in not delivering the shares within the stipulated period should be determined in a trial is immaterial. Summary judgment in Rule 34 of the Revised Rules of Court is a procedural device for promptly disposing of actions without genuine issue as to any material fact. In any stock exchange contract, time is of the essence. This is why the Exchange and its members agreed to have a set of rules and regulations governing the members in their dealings with one another. LLL and respondent CMS, as members of the Exchange, are bound by its Rules and Regulations which are not contrary to law, morals, good customs, public order or public policy (Art. 1306, Civil Code).

Petitioner invokes Articles 1191, 1165 and 1169 of the Civil Code on the right of a party to rescind a contract in case one of the obligors should not comply with what is incumbent upon him.

That right, however, may be waived by contract, as in this case, where CMS and LLL had agreed to abide with the Rules and Regulations of the Exchange of which they were members, which rules provide for a remedy, other than rescission, when a party fails to deliver on another's order to buy shares. Section 1, Article V of the Rules and Regulations of the Exchange provides:

"SEC. 1. - In the event of a Selling Member failing to make delivery within a reasonable period of time of shares sold under delayed delivery contract, it shall be the Buying Member's duty to advise the Selling Member in writing, giving him one (1) full business day from the time of receipt of said letter of demand, to make delivery.

"The Buying Member shall obtain a written receipt from the Selling Member on the duplicate copy of the letter of demand. This receipt must state the time of delivery of the letter of demand to the Selling Member.

"Fifteen (15) days shall be considered a reasonable period of time within which to effect delivery unless otherwise stated in the sales contract.

"In the event a Selling Member is unable to make delivery within said period, the Buying Member shall deliver a copy of his letter of demand to the Chairman of the Floor Trading & Arbitration Committee who may purchase the shares for the Selling Member's account." (pp. 4-5, Record on Appeals, p. 121, Rollo.)

Paragraph 5, Section 1, Article XI of the same Rules provides:

"x x x Delayed Delivery Transactions -

"On the agreed day of delivery, notice in writing shall be given by the selling broker to the buying broker, said notice to reach the buying broker not later than 4:00 p.m. x x x." (p. 16, Rollo.)

Section 1, Article V of the Exchange Rules and Regulations covers not only contracts without a fixed period, but also those contracts where a period for delayed delivery is stipulated.

In the case at bar, the stock purchases of LLL were on a 10-20 day delayed delivery basis. Accordingly, after that

period lapsed, the Buying Member (LLL) should have advised the Selling Member (CMS) in writing, giving CMS one (1) full business day from receipt of said letter of demand to comply. Since the selling member was unable to make delivery within the stated one (1) full business day from receipt of the demand letter, the buying member should have delivered a copy of his letter of demand to the Chairman of the Floor Trading and Arbitration Committee who would have purchased the shares for the selling member's account.

As observed by the trial court, Section 1, Article V of the Exchange Rules does not vest on the buyer, respondent LLL, a right to rescind its contract with CMS upon the latter's default. The Exchange Rules obligate the buyer to make a demand, and if the selling member fails to deliver the ordered shares despite the demand, the buyer is further obligated to deliver a copy of his demand letter to the Chairman of the Floor Trading and Arbitration Committee so that the latter may purchase the shares for the selling member's account. Said rules were held binding on members of the Exchange (*Lopez, Locsin, Ledesma & Co., Inc. vs. Court of Appeals*, G.R. No. L-41291, December 8, 1988). Inasmuch as petitioner placed his order for Benguet shares through a member of the Exchange (LLL), he is indirectly bound by the rules of the Exchange.

The defendants' lack of knowledge regarding the truth of the allegation in the complaint, that the failure of CMS to deliver the Benguet shares on time was due to oversight, did not constitute an obstacle to the rendition of a summary judgment by the trial court, for although an averment of lack of knowledge has the effect of a denial, it does not raise a genuine issue.

"It is true that under Section 7, Rule 9 'Where the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state, and this shall have the effect of a denial,' but 'mere denials unaccompanied by any facts which would be admissible in evidence at a hearing, are not sufficient to raise genuine issue of fact sufficient to defeat a motion for summary judgment' (*Piantadosi vs. Loew's Inc.*, 7 Fed. Rules Service, 786, June 2, 1943). It was also held that 'Summary judgment is proper where there is no genuine issue of fact, even though an issue may be raised formally by the pleadings' (*Fletcher vs. Krise*, 4 Fed. Rules Service, 765, March 3, 1941). And that 'Where all the facts are within the judicial knowledge of the Court, summary judgment may be granted as a matter of law' (*Fletcher vs. Evening Newspaper Co.*, 3 Fed. Rules Service, 539, June 28, 1940)." (*Miranda vs. Malate Garage & Taxicab, Inc.*, 99 Phil. 670; underlining supplied.)

Neither is there merit in the petitioner's contention that because LLL, as third-party plaintiff, did not file a motion for summary judgment against him as third-party defendant, the trial court and the Court of Appeals may not render a summary judgment against him. The argument has no merit for in his Answer to the Third-Party Complaint, he admitted the material allegations of the Third-Party Complaint and prayed for "costs against the third-party plaintiff and/or the plaintiff" (p. 83, Record on Appeal). His defenses alleging no cause of action and in pari delicto raised pure questions of law. His other defense that the Alakor Corporation (not him) was the real party in interest was nullified by the admission in paragraph 5 of his Answer (p. 77, Record on Appeal) of "the material allegations in paragraph 12 of the third party complaint (of LLL)" which alleged that he (Ramos) placed the order for himself.

"12. That on August 14, 1969, the third-party defendant, Alfredo C. Ramos, placed an order with the third-party plaintiff as stock broker to buy for him (Alfredo C. Ramos) in the Makati Stock Exchange one thousand six hundred (1,600) shares of Benguet Consolidated, Inc. at the prevailing price for delivery in 'ten (10) to twenty (20) days.'" (p. 62, Record on Appeal.)

Furthermore, he agreed in his letter-undertaking of January 7, 1970, to hold LLL "free from any liability" (p. 67, Record on Appeal) for rejecting the belated tender of the shares by CMS.

As the cause of action in the third-party complaint was inseparable from that of the complaint, the motion for

summary judgment filed by CMS to resolve the entire controversy was proper. The action being one to recover a debt or sum of money, it is a proper subject of summary judgment.

The appellate court did not commit a reversible error in remanding the case to the trial court for determination of the plaintiff's claims for damages and attorney's fees, for "if judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary" the Court shall direct "such further proceedings in the action as are just." (Sec. 4, Rule 34, Rules of Court.)

WHEREFORE, the petition is denied and the decision of the Court of Appeals is affirmed. Costs against the petitioner.

SO ORDERED.

Narvasa, (Chairman) and Medialdea, JJ., concur.

Cruz, J., on leave.

Gancayco, J., no part.

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