

HENRY H. GAW, PETITIONER, VS. THE HONORABLE INTERMEDIATE APPELLATE COURT AND UY DIET TAN, RESPONDENTS.*G.R. No. 70451. March 24, 1993*

Ponente: ROMERO, J.

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This is a petition for review on certiorari of the decision[1] of the then Intermediate Appellate Court reversing the decision[2] of the then Court of First Instance of Rizal at Quezon City, Branch IX which ordered therein defendant Uy Diet Tan to pay plaintiff Henry Gaw the amount of One Hundred Twenty Thousand Pesos (P120,000.00) as reasonable actual damages and attorney's fees of Ten Thousand Pesos (P10,000.00), and ordering instead, Henry Gaw to pay Uy Diet Tan One Hundred Thousand Pesos (P100,000.00) also as reasonable actual damages plus Twenty Thousand Pesos (P20,000.00) as attorney's fees.

Henry Gaw is a businessman engaged in the buy and sell of hardware and construction materials. Through a dealership agreement, on December 12, 1978, his trading firm, the K. H. Gaw Enterprises, was appointed as one of the four (4) exclusive dealers of white cement of Prime White Cement Corporation (PWCC for brevity). Among others, the agreement stipulated that for five (5) years, the dealer would take delivery from PWCC at least 2,600 bags of white cement a month; that in consideration of the execution of the contract, the dealer would deposit Two Hundred Thousand Pesos (P200,000.00) "to be repaid or returned" to the dealer under a scheme set forth in the same contract, and that the dealer would increase its allocation to 6,500 bags a month and "increase its loan" to PWCC to Five Hundred Thousand Pesos (P500,000.00) "in a contract akin, so as to abreast itself, or cope up with other dealers, within ninety (90) days" from the execution of the agreement.[3]

To avail of the provision on the increased volume of monthly delivery of cement, on February 2, 1979, Gaw entered into a marketing agreement with Foundation Commercial, a single proprietorship, through Uy Diet Tan. Acknowledging that Gaw or the K. H. Gaw Enterprises was one of the four dealers of PWCC "as evidenced by a Contract hereto attached as Annex 'A' and made integral part of this Agreement," the parties agreed that:

"1. That the PARTY OF THE SECOND PART (Tan) shall be entitled to get directly from Prime White Cement Corporation monthly at least 50% of the allocation of white cement of the PARTY OF THE FIRST PART (Gaw) equivalent to at least 3,250 bags a month and shall pay directly the value of the cement to Prime White Cement Corporation;

2. That the PARTY OF THE SECOND PART shall deposit to Prime White Cement Corporation the sum of TWO HUNDRED AND FIFTY THOUSAND PESOS (P250,000.00), Philippine Currency, by way of deposit and as required in its Contract herein marked as Annex 'A' in the name of the PARTY OF THE SECOND PART and repayment by Prime White Cement Corporation of the said amount shall likewise be directly made to the PARTY OF THE SECOND PART at P10,000.00 a month for 30 months, beginning the month of March, 1979 as a marketing firm of the PARTY OF THE FIRST PART;

3. That the PARTY OF THE SECOND PART shall pay to the PARTY OF THE FIRST PART the sum of SEVENTY CENTAVOS (P0.70) per bag for every bag of white cement which the PARTY OF THE SECOND

PART will withdraw from Prime White Cement Corporation, the said amount to be due and demandable every first five (5) days of the next succeeding months;

4. That the PARTY OF THE SECOND PART shall pay in advance to the PARTY OF THE FIRST PART the sum of FIVE THOUSAND PESOS (P5,000.00), Philippine Currency, upon the signing of this Agreement and said amount shall be immediately deductible from the P0.70 per bag premium paid by the former to the latter until the said amount paid in advance shall have been fully paid;

5. That the PARTY OF THE SECOND PART shall invoice the sale in its own name and shall pay to Prime White Cement Corporation the value of the cement also in its own name;

6. All taxes due to the PARTY OF THE SECOND PART on all white cement withdrawn from Prime White Cement Corporation shall be the sole responsibility of the said Second Party;

7. This Contract shall take effect immediately upon signing hereof and co-terminus with the herein Contract of the PARTY OF THE FIRST PART with Prime White Cement Corporation. In the event that the said Contract will be extended for another five (5) years by Prime White Cement Corporation, the duration of this Contract shall also be extended and co-terminus accordingly with the said extension."^[4]

Pursuant to the marketing agreement, on February 8, 1979, Tan issued China Banking Corporation Check No. 456993 in the amount of P250,000.00 payable to PWCC. The latter, however, refused to accept the deposit for the reason that to accept the same in the name of Tan would be tantamount to making him an exclusive dealer thereby violating the dealership agreement entered into between PWCC and Gaw.

Thus, on March 5, 1979, counsel for Tan wrote the Executive Committee of PWCC confirming the intention of Tan to deposit the P250,000.00 "under the name of Mr. Gaw in compliance with his dealership agreement" with PWCC.^[5] In reply to said letter, the Chairman of the Board and of the Executive Committee of PWCC, Constancio B. Maglana, informed Tan's counsel that he had written Tan himself; that "PWCC has already closed the dealership and/or disposition of its white cement product exclusively to four (4) distributors and/or dealers in Manila and Luzon"; that he was "not in a position to violate directly or indirectly any of the terms and conditions" of the existing dealership contracts and that, therefore, the intentions in the letter of Tan's counsel could not be given due course.^[6]

Meanwhile, in an apparent effort to save his option to increase his monthly allocation, Gaw entered into a contract with Mande Commercial whereby the latter agreed to provide P250,000.00 which, together with the P50,000.00 which would be produced by Gaw, would be added to the initial P200,000.00 which Gaw had given to PWCC, to reach the total amount of P500,000.00. The contract was executed on March 9, 1979 with the following terms and conditions: (a) direct sales by Gaw to Mande Commercial of 3,250 bags of white cement a month; (b) the contract shall be for fifty-seven (57) months, specifically from April 1, 1979 to December 31, 1983, and (c) Mande shall pay Gaw a net mark-up or profit of P2.00 per bag.^[7]

Consequently, on March 5, 1979, Tan filed a complaint against Gaw for specific performance with damages and preliminary injunction in the then Court of First Instance of Rizal, Branch IV. Docketed as Civil Case No. Q-27097, the complaint alleged, among other things, that when Tan tried to deposit the P250,000.00 at the PWCC office in T.M. Kalaw St., Ermita, Manila, the auditor of PWCC told him that the amount should be directly deposited in the name of Gaw "to prevent the other dealers from complaining that plaintiff was made another dealer and not as a marketing arm of defendant Gaw" and that, even if Tan was willing to make said deposit in the name of Gaw, the latter "refused to accept the amount proffered and insisted that plaintiff should pay him one peso and fifty centavos (P1.50) instead of seventy centavos (P0.70) per bag as previously agreed upon" in the marketing agreement. Thus, Tan prayed that a preliminary injunction be issued "enjoining or restraining the

defendant from negotiating with the other dealers for the assignment of dealership rights pending the hearing" of the case; that Gaw be ordered to accept the amount of P250,000.00 and to honor and respect his contract with Tan, and that Gaw be directed to pay P50,000.00 in moral damages, P50,000.00 as exemplary damages and actual or compensatory damages of P100,000.00 plus a total of P75,000.00 as attorney's fees and litigation expenses.[8]

Thereafter, Tan filed an urgent ex-parte motion for the issuance of a restraining order to prevent Gaw from disposing of 3,250 bags of white cement which allegedly belonged to Tan by virtue of the marketing agreement. On March 9, 1979, Judge Ricardo P. Tensuan issued the following Order:

"Acting upon the 'urgent ex-parte motion for the issuance of a restraining order' filed by the plaintiff, thru counsel, and finding the reasons alleged therein well-taken, the said motion is hereby granted.

WHEREFORE, the parties are hereby ordered to maintain status quo, particularly the defendant to refrain from continuing the acts complained of. In the meantime, let the application for the issuance of a writ of preliminary injunction be set for hearing on March 16, 1979 at 8:30 A.M."[9]

After having received a copy of said Order on March 12, 1979, Gaw then filed a motion to dismiss the complaint on the grounds of lack of cause of action and that the demand had been extinguished as he had repudiated the marketing agreement. Forthwith, Tan filed an opposition to said motion, to which opposition Gaw filed a reply.

On July 16, 1979, Tan filed a motion to withdraw his complaint on the ground that since he filed it, he had been feeling pain in the chest that, "in the long run, (it) might affect his heart condition." [10] Thus, on July 25, 1979, Judge Tensuan issued an Order dismissing the complaint.[11]

Around four months later or on November 19, 1979, Gaw filed a complaint against Tan for damages in the then Court of First Instance of Rizal, Branch IX at Quezon City. Docketed as Civil Case No. Q-28799, the complaint alleged that the restraining order of March 9, 1979 caused him to lose P370,500.00 which he could have realized as profit out of the 57-month contract with Mande Commercial which had refused to honor said contract in view of the soaring cost of building materials and the limited need for white cement. Pointing to the same restraining order as cause of his losses, Gaw prayed that Tan be ordered to pay the following: (a) P370,500.00 as unrealized profits with interest at the legal rate until fully paid; (b) P30,000.00 attorney's fees and P5,000.00 litigation and other expenses in Civil Case No. Q-27097; and (c) P50,000.00 attorney's fees, and P5,000.00 litigation and miscellaneous expenses in the present case plus whatever amount for moral damages as the court would deem proper.[12]

After trial, the lower court, through Judge Jose P. Castro, rendered a decision on February 15, 1982 in favor of Gaw. It is principally based on its finding that the Order issued on March 9, 1979 by Judge Tensuan was "not just a simple 'status quo' order, but one which restrained Henry Gaw, and because of such restraining order, the plaintiff herein (defendant in that case) had no alternative but to obey the Court's order and stopped the implementation of his then existing contract with Mande Commercial to his damage and prejudice as it deprived him of a sure profit." [13] The decretal portion of the decision reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant, as follows:

1. Ordering the defendant Uy Diet Tan to pay Henry H. Gaw, the amount of P20,000.00 representing reasonable actual damages suffered by plaintiff in the form of unrealized profits, with legal interest from the filing of the complaint until fully paid;
2. Ordering the defendant to pay the plaintiff the amount of P10,000.00 as and for attorney's fees and the cost of the suit.

Insofar as moral damages is concerned, the Court holds that the plaintiff is not entitled.

Accordingly, the counterclaim of defendant is hereby dismissed.

SO ORDERED."[14]

Tan filed a motion for the reconsideration of the decision which was duly opposed by Gaw. After Tan had filed a reply to the opposition, the lower court, in an Order dated May 19, 1982, denied the motion for reconsideration on the basis of its finding that there was no "legitimate reason to disturb the decision." [15]

Tan appealed to the then Intermediate Appellate Court, which, as earlier mentioned, reversed the decision of the lower court. After making its own findings of facts, the appellate court concluded that the claim for damages should have been ventilated in Civil Case No. Q-27097. Nonetheless, the appellate court opined, as the claim for damages was anchored on the issuance of the restraining order, under *Aquino v. Socorro*, [16] that such claim would not prosper in the absence of any allegation or proof that the restraining order was maliciously procured and without probable cause. Finding the counterclaim of Tan in the amount of P1,452,500.00 "to be highly speculative," the appellate court disposed of the appeal as follows:

"WHEREFORE, the judgment appealed from is hereby set aside and REVERSED and another decision is hereby entered dismissing the complaint and on the counterclaim:

1. Ordering plaintiff Henry Gaw to pay defendant Uy Diet Tan the amount of P100,000.00 representing the reasonable actual damages suffered by defendant in the form of unrealized profits, with legal interest thereon from the filing of the complaint until fully paid;
2. Ordering plaintiff to pay defendant the amount of P20,000.00 as attorney's fees and costs against the plaintiff-appellee.

SO ORDERED." [17]

Gaw moved for the reconsideration of said decision but in its Resolution of March 26, 1985, the Intermediate Appellate Court denied it. Hence, the instant petition for review on certiorari interposed by Gaw which raises not only errors of law but also errors of fact. [18]

As a rule, the jurisdiction of this Court in cases brought to it from the Court of Appeals or the then Intermediate Appellate Court is limited to the review and revision of errors of law allegedly committed by the appellate court, as its findings of fact are deemed conclusive. [19] As such, this Court is not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below. [20] This rule, however, is not without exceptions. [21] One of these exceptions is when there is a conflict between the factual findings of the Court of Appeals and the trial court which necessitates a review of such factual findings. [22] This case falls within this exception.

One of the points of disagreement between the appellate court and the lower court is whether or not the marketing agreement had in fact been implemented. The lower court found that Tan was unable to make the deposit of P250,000.00 because PWCC refused to accept it on the ground that it would have virtually made Tan a dealer, thus impelling, PWCC to violate its dealership agreement with Gaw. Moreover, the lower court in effect laid the blame for the non-implementation of the said agreement on Tan through his failure to deposit P5,000.00. [23]

On the other hand, the appellate court ruled that Gaw himself, by breaching the marketing agreement was responsible for its non-implementation. It stated:

"There was nothing wrong with defendant's deposit of P250,000.00 in his own name with Prime White Cement Corporation because that was expressly stipulated in the Marketing Agreement (Exh. B) x x x. Otherwise stated, defendant's deposit of P250,000.00 with Prime White Cement was made in defendant's name in

compliance with the abovequoted stipulations of the Marketing Agreement (Exh. B) between plaintiff and defendant and was not the unilateral act of the latter. Nonetheless, if the manner of deposit as stipulated in the Marketing Agreement was not acceptable to Prime White Cement, defendant was willing to make the deposit in plaintiff's name as evidenced by defendant's letter to plaintiff dated February 28, 1979 (Exh. 9) and to Prime White Cement (Exh. 10). But plaintiff did not even choose to answer defendant's letter (Exh. 9). Instead, plaintiff negotiated and agreed with Mande Commercial for the sale of 3,250 bags of white cement monthly under his dealership contract with a mark-up of P2.00 per bag as confirmed by plaintiff's letter to Mande Commercial dated March 9, 1979 (Exh. L) without the benefit of even a formal contract. It is apparent that the Marketing Agreement (Exh. B) between plaintiff and defendant could have been implemented and/or enforced if plaintiff had intervened and agreed to the proposal of defendant to deposit the P250,000.00 in plaintiff's name (to comply with Prime White Cement's objection) and if plaintiff himself had increased his original deposit from P200,000.00 to P250,000.00 to make the deposit of P500,000.00 in all. If Prime White Cement Corporation does not object to the Agreement (Exh. 3) between plaintiff and A & A Trading and plaintiff's letter agreement (Exh. L) with Mande Commercial, why should it object to the Marketing Agreement of plaintiff and defendant (Exh. B) if the deposit is made in plaintiff's name and the latter had increased his own deposit to P50,000.00? As a party to the Dealership Agreement (Exh. A), it was plaintiff's duty to see to it that the Marketing Agreement (Exh. B) be approved by Prime White Cement and that it be enforced."[24]

We find the appellate court's findings to be more in accord with the evidence on record. In paying directly to PWCC, Tan only observed paragraph 2 of the marketing agreement aforequoted which specifically stated that he was to deposit with PWCC the amount of P250,000.00 in his name. Of course, Gaw capitalized on the testimony of the former president of PWCC to the effect that while Tan tendered the said amount, there was no actual deposit.[25] Such an assertion, however, is belied by the circumstances surrounding the tender of payment, as well as the agreement of the parties explicitly expressed in the marketing agreement. Thus, after PWCC had refused to accept Tan's deposit of P250,000.00 and PWCC's auditor had advised Tan to deposit it in the name of Gaw which Tan accepted, the least that Gaw could have done was to act conformably with such proposal to show his sincerity and good faith.

It is plain from the facts of this case that the agreement was regarded by Gaw as nothing more than a scrap of paper which he could choose to ignore at his pleasure. One cannot help but conclude that he had no intentions of abiding by its terms. But in an effort to conceal his real intention, he went to great lengths to prove to this Court that the agreement was prepared by Trazo, the former president of PWCC, who "induced" him to sign the agreement which had practically the same terms as the marketing agreement of PWCC with Perpetual Commercial.[26] Furthermore, Gaw asserts that "the operative provisions of the marketing agreement actually made respondent Tan a co-dealer of petitioner Gaw" because Tan's transactions with PWCC were "separate and independent." [27]

Under Section 9, Rule 130 of the Rules of Court, once the terms of an agreement have been reduced to writing, it is deemed to contain all the terms agreed upon by the parties and no evidence of such terms other than the contents of the written agreement shall be admissible.[28] Whatever stipulations, clauses, terms and conditions are included in a contract, as long as they are not contrary to law, morals, good customs, public policy or public order, such contract is the law between the parties.[29] Thus, in the interpretation of the provisions of a written contract, the literal meaning of its stipulations must prevail.[30] It, therefore, behooves the parties to examine the terms of a contract thoroughly before signing the same, particularly a businessman like Gaw who may not, by any stretch of the imagination, be considered a tyro in these matters. Had he given even an iota's attention and care to scrutinize the subject contract, he would not have failed to detect that some provisions thereof contravened the terms and conditions of his exclusive dealership agreement with PWCC.

While in a sense, the marketing agreement between Gaw and Tan is related to the original dealership agreement

between the former and PWCC, as the term of the former is co-terminous with that of the latter, we cannot subscribe to petitioner's contention that the marketing agreement was "an attempted novation" of the dealership agreement.[31] Arguing that Tan intended to step into the shoes of petitioner Gaw as a debtor of Prime White in respect to the additional deposit of P250,000.00," Gaw cites Article 1293 of the Civil Code which provides that "(n)ovation which consists in substituting a new debtor in the place of the original one may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor." Yet Gaw fails to prove that PWCC, the creditor, knew all about the so-called substitution.

It is axiomatic that novation is never presumed. It must be explicitly stated in the contract and there must be a manifest incompatibility between the old and the new obligation in every aspect.[32] The fact that the two agreements are co-terminous with each other does not imply that a new obligation had arisen when the marketing agreement was signed, thus displacing the dealership contract. Not only was Gaw not released from complying with the terms and conditions of the dealership agreement but he was, in a sense, already implementing the latter.

Gaw's claim for damages, therefore, had no basis in fact and in law. In the first place, as discussed above, he is partly to blame for the nonimplementation of the marketing agreement. Secondly, the claim for actual damages allegedly resulting from unrealized profits out of his agreement with Mande Commercial appears to have been caused by factors other than the issuance of the restraining order in Civil Case No. Q-27079. The records disclose that he entered into an agreement with Mande Commercial on March 9, 1979, three days before he received a copy of the restraining order on March 12, 1979. Paragraph 14 of the complaint itself in Civil Case No. Q-28799, reveals that Mande Commercial refused to honor the agreement with Gaw because "the price of building materials have gone so high that there are now very much less constructions than before and the need for white cement is limited." [33]

Granting arguendo that the failure of Gaw's agreement with Mande Commercial was indeed the offshoot of the issuance of the restraining order in Civil Case No. Q-27079, Gaw may not successfully claim damages in the absence of proof that Tan maliciously filed Civil Case No. 27079 and that said case was without probable cause. As correctly enunciated by the appellate Court, the ruling in *Aquino v. Socorro* applies in this case. The appropriate remedy would have been for Gaw to hold Tan responsible on the bond that should have been required of him in Civil Case No. 27079. However, since he did not opt for said remedy, in filing the instant case, Gaw is duty-bound to prove malicious prosecution on the part of Tan and lack of probable cause in prosecuting his claim. Tan may not be penalized for resorting to court action in an attempt to implement the marketing agreement. He was within his rights in so doing, and if indeed damage was incurred by Gaw, it is simply *damnum absque injuria*. [34]

We disagree, however, with the appellate court's award of P100,000.00 representing the reasonable actual damages suffered by Tan in the form of unrealized profits. Art. 2201 of the Civil Code entitles a person to recover all damages which may be attributed to the nonperformance of an obligation, but the person claiming the same must prove his case. He must muster the best evidence he can and if so warranted, he might, with reasonable certainty, have been entitled to recover such damages. [35]

Tan, in attempting to justify his claim to the alleged unearned profits, has trenched into the realm of what is speculative. He even failed to present evidence on the average actual profits earned by his business and other indicia of profitability.

WHEREFORE, the decision of the then Intermediate Appellate Court is hereby **AFFIRMED**, subject to the **MODIFICATION** that the award of P100,000.00 representing the actual damages suffered by private respondent Uy Diet Tan in the form of unrealized profits be **DELETED**.

SO ORDERED.

Feliciano, (Acting Chairman), Davide, Jr., and Melo, JJ., concur.

Gutierrez, Jr., J., on terminal leave.

Bidin, J., no part.

[*] J. Hugo E. Gutierrez, Jr., on terminal leave.

[1] Penned by Associate Justice Abdulwahid A. Bidin and concurred in by Associate Justices Porfirio V. Sison and Marcelino R. Veloso.

The petitioner is represented here by Atty. Ireneo R. Clapano, Jr. and Attys. Eleazar B. Reyes, Sabino E. Acut, Jr., Loreto C. Ata and Louise Y. Gochan of the PECABAR Law Office while the private respondent is represented by Atty. Ambrosio Padilla of the Ambrosio Padilla, Mempin & Reyes Law Offices.

[2] Penned by Judge Jose P. Castro.

[3] Record on Appeal, pp. 8-14.

[4] Record on Appeal, pp. 16-21.

[5] Ibid, p. 22.

[6] Record on Appeal, pp. 23-24.

[7] Ibid, p. 96.

[8] Record on Appeal, pp. 25-32.

[9] Record on Appeal, p. 36.

[10] Ibid, p. 52.

[11] Ibid, p. 53.

[12] Record on Appeal, pp. 2-7.

[13] Ibid, p. 100.

[14] Record on Appeal, p. 101.

[15] Ibid, p. 143.

[16] L-23868, October 22, 1970, 35 SCRA 373, 379.

[17] Rollo, p. 48.

[18] Petition, p. 12; Rollo, p. 16.

[19] Morales v. Court of Appeals, G.R. No. 91003, May 23, 1991, 197 SCRA 391, 401.

[20] Navarra v. Court of Appeals, G.R. No. 86237, December 17, 1991, 204 SCRA 850, 855.

[21] Morales v. Court of Appeals (supra at p. 401) enumerates these exceptions as: (a) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (b) when the inference made is manifestly absurd, mistaken or impossible; (c) when there is grave abuse of discretion in the appreciation of facts; (d) when the judgment is premised on a misapprehension of facts; (e) when the findings of fact are conflicting; and (f)

when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee.

[22] *Co v. Court of Appeals*, G.R. No. 86597 and *Lio v. Court of Appeals*, G.R. No. 86614, January 23, 1991, 193 SCRA 198, 206.

[23] Record on Appeal, pp. 95 & 98.

[24] IAC Decision, pp. 7-8; Rollo, pp. 44-45.

[25] Memorandum for Petitioner, pp. 33-34.

[26] Petitioner's Memorandum, p. 22.

[27] *Ibid*, pp. 18 & 30.

[28] See: *Policarpio v. Court of Appeals*, G.R. No. 94563, March 5, 1991, 194 SCRA 729.

[29] *Pe v. Court of Appeals*, G.R. No. 74781, March 13, 1991, 195 SCRA 137.

[30] *Fermin v. Court of Appeals*, G.R. No. 95146, May 6, 1991, 196 SCRA 723.

[31] Petitioner's Memorandum, p. 20.

[32] *Young v. Court of Appeals*, G.R. No. 83271, May 8, 1991, 196 SCRA 795.

[33] Record on Appeal, p. 6.

[34] *Saba v. Court of Appeals*, G.R. No. 77950, August 24, 1990, 189 SCRA 50.

[35] *G.A. Machineries, Inc. v. Yaptinchay*, L-30965, November 29, 1983, 126 SCRA 78 citing *Cerrano v. Tan Chuco*, 38 Phil. 392 [19] and *Central Bank of the Philippines v. Court of Appeals*, L-33022, April 22, 1975, 63 SCRA 431, 457.

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