

PACMAC, INC., PETITIONER, VS. THE HONORABLE INTERMEDIATE APPELLATE COURT AND VULCAN INDUSTRIAL & MINERAL EXPLORATION CORPORATION, RESPONDENTS.

G.R. No. 72405. May 29, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review on certiorari of the decision of the then Intermediate Appellate Court, now the Court of Appeals, which set aside the earlier decision in Civil Case No. Q-9386 of the then Court of First Instance of Rizal, 7th Judicial District Branch V-Quezon City.

In Civil Case No. Q-9386, PACMAC Incorporated (hereinafter called PACMAC) alleged that by virtue of an existing contract and arrangement with VULCAN Manufacturing Company Incorporated (hereinafter called VULCAN), the former since 1953 continuously up to August 3, 1965 has been the exclusive distributor of the latter's products and that in said arrangement VULCAN was obliged to periodically deliver and sell, at its own dictated price any number or volume of its products exclusively to PACMAC. PACMAC would, in turn, exclusively sell and distribute said products to the open market, whether in wholesale or retail, at a price set and commanded by VULCAN, and that on August 3, 1965 VULCAN unilaterally terminated the contract of exclusive distributorship causing damages to PACMAC.

In its answer, VULCAN denied the contract of exclusive distributorship with PACMAC. By way of counterclaim, VULCAN alleged that PACMAC is indebted to it as of September 30, 1965 in the sum of P320,220.25 plus interest representing the unpaid purchase price of VULCAN's products sold and delivered to PACMAC.

The facts of the case as found by the trial court are not disputed. The appellate court adopted these factual findings, to wit:

"It appears from the evidence that plain-tiff Pacmac, Inc., was organized in 1949 as a trading concern, with Russell T., Elliott as its president and general manager. Follow-ing researches and experimentation conducted at Pacmac, Inc., Elliott subsequently organized the defendant corporation in 1953, as a manufacturing concern, starting off with the production of rubber cement. Upon the organization of defendant corporation, then known as the Vulcan Manufacturing Co., Inc., Elliott also became its president and general manager, at the same time that he remained president and general manager of the Pacmac, Inc. Both corporations had their offices in the same building inside the compound of Pacmac, Inc. from 1953 up to 1967. From the start, defendant sold its products to plaintiff on 60-day terms, and plaintiff in turn dealt on said products in the open market. It was understood that plaintiff would not sell similar products from other sources competitive with those of defendant.

"In 1956, Patrocinio Bautista who had known Elliott since 1952, became vice president concurrently of both corporations, while Elliott continued to be president and general manager also of both as from the start. At the same time, many if not all of the members of the board of directors of plaintiff corpo-ration were likewise members of the board of directors of defendant corporation. The set-up remained as such until the early part of

1960, when upon the suggestion of Elliott for the reason that the growth of both corporations had made it difficult for him to manage both, Patrocinio Bautista was made president and general manager of Pacmac, Inc. at the same time ceasing to be vice president of Vulcan Manufacturing Co., Inc., while Elliott stayed on as president and general manager only of the latter company. The shift in management responsibilities over the two corporations was eventually followed by a change in the stockholdings of Elliott and Bautista, who were substantial stockholders in both. Elliott gave up his shares in Pacmac, Inc. and acquired more shares in the Vulcan Manufacturing Co., Inc. while Bautista gave up all his shares in the latter corporation and acquired more shares in Pacmac, Inc. According to the evidence of plaintiff, this happened also in 1960, but the evidence of defendant places this occurrence in 1962 after a power struggle over the control in the management of Vulcan Manufacturing Co., Inc., between the group of Elliott, on one hand, and that of Bautista, on the other, which Bautista lost in the showdown at the annual stockholders' meeting in that year.

"The drift of events appears to lend more probability to the claim of defendant in this respect. It appears that on February 17, 1962, the majority of the members of the board of directors of defendant corporation approved an amendment to its articles of incorporation thereby authorizing the said corporation to engage in the merchandizing business as one of its secondary purposes and increasing the kind of products it could manufacture. This amendment likewise was subsequently approved by the stockholders of the corporation during the annual meeting held February 20, 1962. In the directors' certificate to this amendment, dated March 20, 1962, Bautista still appears to have signed as director of defendant corporation (Exhs. "8" and "8-A").

"On December 6, 1962, both parties entered into a written contract (Exh. "6") of exclusive distributorship for two years beginning November 16, 1962 over two products manufactured by defendant, the most pertinent provision of which reads:

'1. That the PURCHASER shall have the exclusive right to distribute and resell the MANUFACTURER's SODIUM SILICATES and ADHESIVE products. However, in consideration of this exclusive privilege, the PURCHASER agrees not to distribute or resell adhesives and sodium silicates products of other manufacturers or brands; (This agreement does not cover shoe cement products, moulds, dies, show ranks and other products manufactured by Vulcan).'

It appears that the two products subject of the written agreement of exclusive distributorship were new products of defendant and the contract was prompted by an agitation in the board of directors of defendant in view of a desire to go into the merchandizing business, as was suggested to plaintiff. Along with that, defendant also claims that there was dissatisfaction with an alleged lag in plaintiff's payments of its accounts with defendant.

"While the agreement (Exh. "6") was not renewed at the end of its two-year term, the purchase and sale by plaintiff of the two products continued. x x x

"xxx on August 3, 1965, defendant, x x x wrote plaintiff a letter (Exh. "7") advising the latter that as of that date defendant would no longer deliver any of its products to plaintiff except those items for which orders had already been booked, unless the same would be cancelled by plaintiff. Defendant justified its action on the 'knowledge that PACMAC is now distributing 'Durabond' Sole Attaching Cement as manufactured by Regional Enterprise'. In a letter of reply of the same date (Exh. "15"), plaintiff, x x x denied and protested against the accusation x x x. On the other hand, it was recalled that Elliott had previously admitted that defendant had been distributing its own products 'despite (its) existing relationship' with plaintiff. Plaintiff's letter also advised that its orders previously booked still stood. It does not appear, however, that deliveries on the pending orders were thereafter made, as it is admitted that defendant stopped deliveries as of August 3, 1965. The reason given by defendant for refusing to make further deliveries on the pending orders from plaintiff was the latter's failure to pay a balance of P23,000.00 in accordance with an understanding between them on August 10, 1965 (Exh. "17")." (Rollo, pp. 44-47).

The trial court found for the petitioner. Considering however, that PACMAC owed VULCAN the amount of P304,855.50 representing the unpaid purchase price of VULCAN's products sold and delivered to PACMAC and that the damages due PACMAC was fixed in the amount of P189,908.76, the trial court ordered PACMAC to pay VULCAN the sum of P114,946.74 with interest therein at the legal rate from September 30, 1965 until the same is paid.

Both parties appealed the decision to the then Intermediate Appellate Court.

As stated earlier, the appellate court set aside the trial court's decision. The dispositive portion of the decision reads:

"WHEREFORE, the decision appealed from is hereby set aside and judgment is rendered on the counterclaim, ordering plaintiff PACMAC Incorporated to pay the defendant Vulcan Manufacturing and Trading Corporation, the sum of P304,855.50 with legal interest from September 30, 1965 until the same is fully paid, with costs against plaintiff-appellant. This amount was mutually submitted and agreed between the parties during the pre-trial proceedings as the balance due the defendant from the plaintiff on said date." (Rollo, pp. 49-50).

The main issue in the instant petition hinges on the actual business relationship between PACMAC and VULCAN on August 3, 1965 when the latter suddenly stopped deliveries of its products to the former.

The conclusions of the appellate court on factual matters differ from those of the trial court. Hence, a minute scrutiny by this Court is in order and resort to duly proven evidence becomes necessary. (Serrano v. Court of Appeals 139 SCRA 179; Legaspi v. Court of Appeals, 69 SCRA 360; Tolentino v. De Jesus, 56 SCRA 167).

Although the appellate court found that there existed an implied contract of exclusive distributorship between the two parties with PACMAC as distributor of VULCAN's products beginning in 1953, it ruled that this implied contract was terminated when on December 6, 1962 both parties entered into a formal written contract (Exhibit '6') of exclusive distributorship for two years beginning November 16, 1962 covering only two products, namely sodium silicates and adhesive products manufactured by VULCAN. Under this theory, the appellate court opined that the terms in the written contract superseded all previous contracts between the two parties. Consequently, the appellate court concluded that since the contract provides for the expiration of the exclusive distributorship after 2 years, specifically on November 16, 1964, there could have been no gross and evident bad faith on the part of VULCAN when on August 3, 1965 it terminated the exclusive distributorship agreement embodied in Exhibit "6".

The appellate court came up with this conclusion applying the parol evidence rule which is Section 7, Rule 130 of the Revised Rules of Court, to wit:

"When the terms of an agreement have been reduced to writing, it is to be considered as containing all such terms, and, therefore, there can be, between the parties and their successors in interest, no evidence of the terms of the agreement other than the contents of the writing, xxx."

The petitioner now contends that the parol evidence rule was erroneously applied by the appellate court because there was evidence of an oral agreement and acts implementing that agreement on the part of both parties subsequent to the execution of the written contract which changed and added to the terms of the distributorship arrangement. Under these circumstances, PACMAC argues that the written contract was an inadequate measure of the entire agreement between the parties thereto.

The stand of the petitioner is rightly premised on the principle that the parol evidence rule does not preclude the admission of extrinsic evidence to prove subsequent agreements between the parties to a written contract, to wit:

"The rule forbidding the admission of parol or extrinsic evidence to alter, vary, or contradict a written

instrument does not apply so as to prohibit the establishment by parol of an agreement between the parties to a writing, entered into subsequent to the time when the written instrument was executed, notwithstanding such agreement may have the effect of adding to, changing, modifying, or even altogether abrogating the contract of the parties as evidenced by the writing; for the parol evidence does not in any way deny that the original agreement of the parties was that which the writing purports to express, but merely goes to show that the parties have exercised their right to change or abrogate the same, or to make a new and independent contract." (32 C.J.S. 1008-1009 cited in *Francisco, Evidence*, Volume VII Part I 1973, p. 167. See *Canuto v. Mariano* 37 Phil. 840)

The appellate court, therefore, erred when it failed to consider the evidence proving that the exclusive contract of distributorship between the parties went beyond the expiration of the two year written contract between the parties.

The petitioner presented evidence to show that after sensing VULCAN's desire to go into distribution of its own products, Patrocinio Bautista, president and general manager of PACMAC secured verbal assurances from Russel Elliott, VULCAN's president and general manager, to give the former at least a year's notice in advance before cutting off the distributorship arrangement between the two parties. This was given credence by the trial court over the denials of VULCAN.

Jose Basa, a witness for VULCAN testified that in a letter dated November 16, 1964 (Exh. "4", alleged true copy of letter) VULCAN notified PACMAC of the expiry date of the 2-year distributorship agreement; that in reply to this letter, PACMAC through P.E. Bautista, asked for at least 3-months notice before the business relationship could be effectively terminated by either of the parties. This letter, marked as Exh. 5, was an alleged true copy of the letter written by P.E. Bautista. This was denied by Bautista.

With two conflicting pieces of evidence before it, the trial court said:

"xxx Of the two conflicting evidence on the point, the Court is more inclined to give credence to the testimony of Bautista, than to Exh. 5 of defendant which was testified to by witness Jose Basa whose testimony has heretofore been found to suffer from doubtful veracity. Moreover, considering the extent and volume of business carried on between plaintiff and defendant under the distributorship arrangement, it is improbable that plaintiff would have bargained for only a minimum of three months' notice within which to adjust its business. One year's notice could not have been unreasonable it appearing that for the year ending December 31, 1966, plaintiff managed to make a net income of only P68,404.57 (Exh. D-4) as compared to its net income for the year 1964, when the distributorship arrangement was still intact, in the amount of P218,313.33 (Exh. D-2). xxx" (Joint Record on Appeal, pp. 99-100)

We find no substantial reason from the records to deviate from, much less reverse, these factual findings of the trial court. The trial court's conclusion that evidence on the one year notice to terminate the exclusive distributorship arrangement between the two parties is more credible than the proof of a three-month notice alleged by VULCAN due to the volume of business carried on by the two parties is bolstered by the un rebutted evidence of PACMAC that before the distributorship arrangement was terminated, more than 60% of its gross sales consisted of VULCAN's products. VULCAN continued to supply the same amounts and under the same terms to PACMAC of its entire range of products. After termination, gross sales of P2,621,857.46 were reduced by P1,570,000.00 in one year's sales.

The records establish that after the termination of the two-year written contract, the parties agreed on another term regarding the duration of their distributorship arrangement. They also agreed that the distributorship arrangement would remain in full force until one year from and after notice of its termination would have been given to PACMAC.

The inevitable conclusion, therefore, is that the parties' contract of exclusive distributorship arrangement was still in existence on August 3, 1965 when VULCAN decided to stop deliveries of its products to PACMAC. VULCAN's unilateral act of terminating the contract without legal justification makes it liable for damages suffered by PACMAC pursuant to Article 1170 of the New Civil Code which provides:

"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."

The petitioner argues on the basis of the evidence it presented before the trial court that it is entitled to actual and compensatory damages of at least P360,000.00 plus interest, exemplary damages of at least P100,000.00, attorney's fees of at least P50,000.00 and litigation expenses of at least P25,000.00.

The trial court reduced the claims for damages to more reasonable levels. We agree with its findings that:

"Neither can the Court reasonably go along with plaintiff that the measure of damages due it should be based on the average monthly profit of P31,307.68 it was getting out of the sales of defendant's products during the existence of the distributorship arrangement (Exh. D). Evidently, and as can be gathered from the testimony of plaintiff's witness Felicisimo S. de Ocampo, who prepared Exh. D, the average monthly profit arrived at in the sum of P31,307.68 does not actually represent the average net monthly profit from the sale of defendant's products, since the selling or administrative expenses have not been taken into account. As a matter of fact, Ocampo could not state what part of plaintiff's selling expenses referred to defendant's products. Moreover, it was incumbent upon plaintiff to minimize its damages by getting other suppliers and selling other products when defendant altogether stopped selling to plaintiff. It is reasonable to assume that, indeed, plaintiff did just this. The more equitable basis then would be the diminution in the net income of plaintiff during the entire year following the termination of the distributorship arrangement, or the difference between its net income of P218,313.33 in 1964, shown by its own evidence (Exh. D--2), as against P68,404.57 in 1966, also shown by its own evidence (Exh. D-4), which is P149,908.76. For having acted in gross and evident bad faith, considering defendant's unjustified and sudden cutting off of its sales to plaintiff, after having surreptitiously sold its products in the open market (see Exhs. 9-A, 10-A, 11-A and 12-A), all in a wilful breach of the distributorship arrangement with plaintiff and mindless of the prejudice to the latter's business, defendant is also liable to plaintiff for exemplary damages in the amount of P30,000.00 and attorney's fees in the amount of P10,000.00.

"On the other hand, upon defendant's counterclaim, plaintiff is in turn liable for the payment of its admitted account with defendant in the amount of P304,855.50 as of September 30, 1965 (Exh. C or 1). Compensating the amounts due plaintiff under its complaint in the total sum of P189,908.76 against the amount defendant under its counterclaim in the sum of P304,855.50, there still remains a net amount of P114,946.74, exclusive of interest, due defendant from plaintiff. Defendant's claim for interest on plaintiff's account at twelve (12%) percent per annum is not sufficiently supported by, the evidence. Except for the sodium silicates and adhesives subject of the written two-year agreement (Exh. 6), wherein it was stipulated that nonpayment within sixty (60) days would make plaintiff liable to one (1%) percent interest charge per month until the account is paid, there is nothing in the evidence to prove that the plaintiff's accounts as to the other products were also subject to the same rate of penalty, or what part, if any, of plaintiff's accounts pertained to unpaid purchases of sodium silicates and adhesives. However, defendant is entitled to interest at the legal rate on the amount due it from plaintiff after compensating their respective claims." (Joint Record on Appeal, pp. 100--103).

WHEREFORE, the instant petition is GRANTED. The questioned decision of the Intermediate Appellate Court is REVERSED and SET ASIDE. The trial court's decision is REINSTATED.

SO ORDERED.

Fernan, (Chairman), Paras, Bidin, and Cortes, JJ., concur.

Padilla, took no part; private respondent's counsel is a partner of Sen. Ambrosio Padilla who is related to me.

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