

ALTO SALES CORPORATION, PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT AND PHILIPPINE VIRGINIA TOBACCO ADMINISTRATION, RESPONDENTS.

G.R. No. 72763. May 29, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition seeks the review of the Resolution of the then Intermediate Appellate Court dated November 4, 1985 which reversed an earlier decision of said court, dated January 24, 1985, disposing as follows:

"In view of the foregoing, We are constrained to reconsider our decision dated January 24, 1985 by affirming the decision appealed from." (p. 61, Rollo)

In its January 24, 1985 decision, the Court of Appeals set aside the appealed decision of Judge Guardson R. Lood of the Court of First Instance of Rizal, dated April 8, 1974 (hereafter referred to as the "Lood decision") which dismissed the complaint and counterclaim and reinstated the decision of Judge Andres Reyes issued on May 3, 1968 (hereafter referred to as "Reyes decision"), authorizing enforcement of the Purchase Agreement between Alto and PVTA, as follows:

"WHEREFORE, the judgment appealed from is hereby set aside. The judgment rendered by Judge Andres Reyes on May 3, 1968 is hereby reinstated with the modification that defendant be ordered to pay the plaintiff P75,000.00 as attorney's fees. The award of exemplary damages is also eliminated." (p. 99, Rollo)

This case started with Alto's suit, premised on a Purchase Agreement dated September 17, 1965, for the sale by PVTA of eight million (8,000,000.00) kilos of Virginia Tobacco Grades "D" and "E" at a price of US\$.295 per kilo ex-warehouse. The agreement contains, among other conditions, the following:

".....

"4. That the tobacco subject of this Agreement shall be strictly for export purposes only; and the entire quantity certified as available in readily exportable condition by the PVTA shall be exported within SIX (6) MONTHS from the receipt of notice of approval of this Agreement by the Office of the President and the issuance of the export license by the Central Bank of the Philippines;

"5. That it shall be the duty of the VENDEE upon approval of this Agreement by the Office of the President and the issuance of the certificate of availability of the tobacco subject of this agreement or part thereof to apply to the Central Bank for an export license within a reasonable time and should he not apply for said export license the contract shall be automatically inoperative and the VENDEE agrees to pay in liquidated damages to the VENDOR the sum of ONE HUNDRED THOUSAND (P100,000.00) PESOS.' (Exhibit A).

".....

"1. That the VENDEE shall be entitled to import foreign leaf tobacco for blending purposes, in consideration of its purchase and exportation of VENDOR's virginia tobacco under its Purchase Agreement with the

VENDOR dated September 17, 1965 at a ratio of ONE (1) kilo of blending tobacco to FOUR (4) kilos of VENDOR's Virginia tobacco purchased and exported.' (Exhibit B) (pp. 86-87, Rollo)

Even before the approval of the Purchase Agreement, Antonio Quirino, the President and Chairman of the Board of Alto negotiated with K. E. Renner for the sale of eight (8,000,000) million kilos of local Virginia tobacco at US\$0.33 per kilo. (Annex C, Exhibit C). He also negotiated for the sale of the expected importation (as authorized under par. 1, above-cited) of U.S. blending tobacco to La Suerte Cigar & Cigarette Factory. And, upon receipt of the notice of approval of the Purchase Agreement by the Office of the President, Antonio Quirino as President of Alto, not only applied with the Central Bank for the issuance of an export license but also opened a letter of credit to cover the exportation of the subject Virginia tobacco from the Philippines.

However, PVTA through its new Officer-in-charge Federico Moreno, subsequently suspended action on the contract because of then Senator Alejandro Almendras' telegram to PVTA which states that - pending inquiry by the Senate Committee on Commerce & Industry, PVTA should withhold action on all contracts, certificates of releases made and approved by PVTA before and after election.

Despite Alto's statements that it had already applied for an export license as early as October 28, 1965, PVTA inquired from the Central Bank as to whether or not Alto had already applied for the required export license and if so, the status of said application. The Central Bank on March 10, 1966 replied that Alto had not yet filed the "requisite Report of Foreign Sales" (SB:ED Form No. 101). PVTA thus canceled the contract claiming violation of the terms and conditions of paragraph 5 thereof. Alto protested the unilateral cancellation, but PVTA refused to reconsider. Instead, PVTA concluded an agreement with L & C Integrated Industries, Inc. for the purchase and exportation of four million (4,000,000) kilos of tobacco Grades D and E (Exhibit F-1). And, on March 31, 1967, PVTA likewise issued an invitation to bid for the sale of 72,000,000 kilos of tobacco stock, crop years 1961-1966. (Exhibit G).

In the meantime, or on February 7, 1967, the 75,600 kilos of imported tobacco for blending purposes ordered by Alto from the US was not released by the Bureau of Customs, because of PVTA's refusal to sell to Alto the corresponding locally produced Virginia tobacco for export which would have been the basis for the issuance of the required permit to import foreign leaf tobacco, and which only the PVTA has the authority to issue. As a result, Alto incurred considerable expenses and losses due to the deterioration of the tobacco and the storage fee and charges at the rate of P500.00 a day.

PVTA's main argument is that the contract was canceled, because instead of applying for an export license in the proper form supported by the required documents, Antonio Quirino, President and Chairman of Alto Sales hand-carried a letter to R. Marino Corpus, Head of the Export Department of the Central Bank. He disregarded and failed to comply with Mr. Corpus' advice that the application should be supported by a Report of Foreign Sales (CB:ED Form No. 101).

On May 3, 1968, Reyes rendered his decision in favor of Alto, the dispositive portion of which reads:

"WHEREFORE, the Court renders judgment ordering defendant PVTA:

"(a) To immediately sell to plaintiff for the purpose of exportation 360,000 kilos of local Virginia tobacco, Grade 'D' and 'E,' of the kind and quality specified in their contract, Exh. 'A,' and to issue the corresponding authority to the plaintiff to import the 75,600 kilos of imported leaf tobacco now in storage in the Bureau of Customs and to pay storage charges at the rate of P500.00 a day during the entire period of the storage, including P270,000.00 representing damages which the plaintiff has to pay to La Perla Cigar & Cigarette Factory for failure to deliver said tobacco as agreed upon in their contract. If for any reason whatsoever the plaintiff is not able to obtain the release of the said tobacco from the Bureau of Customs, defendant PVTA

should pay the plaintiff the value of the said tobacco in the amount of P262,332.00 plus the amount of P1,214,136.00 representing unrealized profits from the said tobacco, plus P270,000.00 representing damages which the plaintiff has to pay to La Perla Cigar & Cigarette Factory for failure to deliver said tobacco as agreed upon in their contract;

“(b) To pay the plaintiff the amount of P1,092,000.00 representing the net profits which the plaintiff would have realized from the exportation of the 8,000,000 kilos of locally produced Virginia tobacco;

“(c) To pay the plaintiff the amount of P30,905,864.00 representing the net profits which the plaintiff failed to realize because of its failure to import 1,924,400 kilos of blending tobacco;

“(d) To pay the plaintiff the amount of P3,000,000.00 as exemplary damages;

“(e) To pay the plaintiff the amount of P500,000.00 as attorney's fees, and

“(f) To pay the costs of this suit.” (pp. 90-91, Rollo)

Thereafter, a series of moves and countermoves resulted in this protracted litigation.

On May 18, 1968, PVTA filed a Notice of Appeal which was withdrawn on June 4, 1968 and substituted with a Motion to Set Aside Decision and/or for a Reconsideration of the Decision and/or New Trial. Alto opposed this motion. On September 4, 1968, Alto filed a Motion for Execution Pending Appeal. However, action on the said motion was held in abeyance by the trial court pending resolution by this Court of a petition for certiorari with preliminary injunction instituted by PVTA in 1967, entitled "Philippine Virginia Tobacco vs. Hon. Andres Reyes, et al., L-27665," (77 SCRA 205. This petition was dismissed for having become moot on March 31, 1977, or about ten years later). In the meantime, Judge Andres Reyes was appointed as Associate Justice of the Court of Appeals. The then Executive Judge, Judge Pedro Revilla, on motion of Alto, transferred the case to Judge Benjamin H. Aquino who issued an Order dated September 10, 1969 denying PVTA's motion to set aside the decision and/or motion for reconsideration and/or new trial, but granted Alto's motion for execution pending appeal. PVTA received a copy of said order on September 12, 1969.

On September 17, 1969, defendant PVTA filed a Record on Appeal and at the same time, filed an Urgent Ex-Parte Motion for Reconsideration of the Order of September 10, 1969 and/or to Set Aside the Writ of Execution (See p. 330, RA, Alto Sales; p. 188, Rollo). These were opposed by Alto. But on September 23, 1969, the trial court through Judge Benjamin Aquino issued an order reversing itself by setting aside the Order of September 10, 1969. Then after the foregoing order was issued, Judge Guardson Lood assumed his Office as Presiding Judge of Branch VI of the Court of First Instance of Rizal. On December 20, 1969, he issued an order giving both parties ten (10) days to file their respective pleadings and replies to apprise the court of the incidents of the case.

On February 14, 1970, PVTA filed a "Motion to Submit Evidence." On March 17, 1970, PVTA filed a "Supplemental Motion for New Trial," which was opposed by Alto.

On September 4, 1970, the trial court, through Judge Lood issued an Order denying PVTA's motion to set aside the decision of May 3, 1968 and/or for a reconsideration of the decision and/or new trial dated June 3, 1968 and its supplemental motion dated March 17, 1970. It however modified its May 3, 1968 decision by reducing the amount of exemplary damages and attorney's fees awarded to Alto, the dispositive portion of which is quoted below:

"WHEREFORE, defendant's Motion to Set Aside Decision and/or for Reconsideration of Decision and/or for New Trial dated June 3, 1968 together with its Supplemental Motion and Manifestation dated June 25, 1968 and its Supplemental Motion for New Trial dated March 17, 1970 are hereby denied for lack of merit, with a

modification, however, in the amount of exemplary damages and attorney's fees awarded which is hereby reduced to P500,000.00 and P100,000.00 respectively, for the reason that exemplary damages are imposed by way of example or correction for the public good and the previous amount of P3,000,000.00 awarded was excessive compared to the initial capital invested although the actual damages arising therefrom were enormous.

"Consideration of Plaintiff's Motion for Execution Pending Appeal dated September 4, 1968 is however held in abeyance.

"SO ORDERED." (pp. 395-396, Record on Appeal)

On September 11, 1970, PVTA filed a Notice of Appeal and Appeal Bond. On September 14, 1970 it also filed its Supplemental Record on Appeal.

On September 18, 1970, Judge Lood issued a 'Special Order' granting Alto's motion for execution pending appeal, specifically paragraphs (a) and (b) and likewise appointed Deputy Sheriff Guido to carry out and implement the writ of execution upon depositing a bond in the sum of P1,500.00. A copy of the order was received by PVTA on September 21, 1970.

Despite the fact that it had filed a notice of appeal and record of appeal questioning the decision of May 3, 1968, PVTA filed on September 29, 1970 a motion to set aside the order of September 4, 1970 and for a New Trial. Alto opposed the motion on October 12, 1970. On December 9, 1970 the trial court reconsidered and set aside its Orders of September 4, and 18, 1970 and likewise vacated the decision of May 3, 1968 and then ordered a new trial in the case.

On April 3, 1971, Alto instituted an action for Certiorari with preliminary injunction in this Court in L-33368 entitled "Alto Sales Corporation vs. Hon. Guardson Lood, et al.," assailing the validity of the Order of December 9, 1970 for not only setting aside its Orders of September 4 and 18, 1970 and for granting new trial but also in ordering the decision of May 3, 1968 vacated (p. 93, Rollo). On April 15, 1971, We dismissed Alto's action as being premature. Alto then filed a motion for reconsideration which We denied on May 17, 1971 for lack of merit. A second motion for reconsideration was also denied on September 23, 1971 (p. 154, Rollo) (*Italics ours*).

On May 27, 1971, Alto filed with this Court a motion for clarification and for leave to file a second motion for reconsideration. The motion was granted. Alto filed its motion alleging that the trial court had already lost jurisdiction of the case at the time it issued its questioned order for the reason that the decision of May 3, 1968 had already become final. We denied Alto's motion for lack of merit on September 23, 1971.

When the case was remanded to the trial court, Alto insisted on its view that the decision of May 3, 1968 had already become final and so on January 7, 1972 filed a Motion to Declare the Judgment of May 3, 1968 and order of September 4, 1970 final and thus, the court had lost jurisdiction. It also prayed that the court desist from proceeding with the new trial. PVTA opposed said motion. On June 9, 1972, the trial court denied Alto's motion.

Trial of the case was reopened. Thereafter the case was considered submitted for decision.

Alto, however, persisted in its argument that the decision of May 3, 1968 as well as the Order of September 4, 1970 had already become final, and so filed a motion for execution of judgment and another action to hold in abeyance action on the new trial and to suspend period for filing a memorandum. Both motions were opposed by PVTA. A motion for reconsideration was filed by Alto but was also denied by the trial court on December 10, 1973.

On January 18, 1974, or three months before Judge Lood's decision on April 8, 1974, Alto filed another action for certiorari, prohibition and mandamus with preliminary injunction with this Court entitled "Alto Sales Corporation

vs. Hon. Guardson Lood, et al., L-38062, (128 SCRA 91)" (p. 158, Rollo), questioning the denial by the trial court of its motion for execution of the judgment. This Court did not issue the writ as prayed for. As a consequence, proceedings in the trial court continued and on April 8, 1974, judgment was rendered, the dispositive portion of which reads:

"WHEREFORE, IN VIEW OF ALL THE FOREGOING, the complaint is hereby dismissed. The counterclaim is also dismissed for lack of evidence. Both dismissals are without pronouncement as to costs." (p. 94, Rollo)

On March 6, 1984, this Court issued a Per Curiam Resolution on Alto's petition (L-38062) portions of which state as follows:

".

"The instant certiorari and mandamus case (filed in 1974) is in a way a revival of that 1971 petition. During the interval, the new trial had proceeded and the evidence had already been presented. As already noted, Judge Lood rendered his judgment less than three months later. The Solicitor General, as PVRTA's counsel, furnished this Court with a copy of the decision.

"Alto's appeal was docketed in the Court of Appeals as CA-G.R. No. 57514-R. The Solicitor General contended that, because of that appeal, this certiorari and mandamus case 'deserve outright dismissal' since the issues raised by Alto in this case can be pursued in the Appellate Court 'with the same fervor and effectiveness' (p. 565, Rollo). See PVRTA vs. Reyes, L-27665, 77 SCRA 205, which was filed in this Court in 1967 and dismissed for having become moot on May 31, 1977, or about ten years later.

"Instead of dismissing this case for having been rendered moot by Alto's appeal, this Court in its resolution of August 10, 1981, with the consent of the parties, required the Appellate Court to elevate to this Court the record of CA-G.R. No. 57514-R for consolidation with this case. The parties manifested that they have no desire that factual issues be resolved first by the Court of Appeals.

"Then, on January 30, 1984, Alto filed a motion for the immediate resolution of this certiorari and mandamus case and its appeal.

"Acting on that motion and after a review of the circumstances of this long-drawn out litigation and in the interest of the orderly administration of justice, this Court Resolved to RECONSIDER and set aside its August 10, 1981 resolution and to return the record (with the briefs) of CA-G.R. No. 57514-R to the Intermediate Appellate Court for immediate resolution of Alto's appeal.

"We should not usurp the fact-finding function of the Appellate Court. This case and the appeal were not submitted for decision on a stipulation of facts. When the facts are admitted, the conclusion to be drawn from those facts is a question of law which may be resolved by this Court. (Cunanan vs. Lazatin, 74 Phil. 719). That is not the situation in the case of Alto's appeal.

"Although this certiorari and mandamus case has in a way been rendered moot by Alto's appeal, we, nevertheless, INDORSE it to the Appellate Court which has concurrent jurisdiction to resolve it and which is intimately related to the appeal. From the evidence adduced before Judge Lood, the Appellate Court should gather the facts.

"The Appellate Court is directed to give priority to Alto's appeal and to decide it together with this case with the least delay. All factual and legal issues raised by the parties, including the issue as to whether Judge Lood could still set aside Judge Reyes' decision and grant new trial, should be adjudicated. No costs."

"SO ORDERED." (pp. 81-84, Rollo) (Italics ours)

Alto's appeal (docketed as CA-G.R. No. 57514-R)[*] raised nine (9) assignments of errors which boil down to

two main questions, namely: (1) whether or not the original decision dated May 3, 1968 as modified by the Order of September 4, 1970 has become final and executory. If so, is the conduct of a new trial and thereafter the promulgation of the decision on April 8, 1974 done without jurisdiction; (2) whether or not PVTA's action in considering the Purchase Agreement with Alto inoperative, is valid and justified.

The Court of Appeals rendered its decision on January 24, 1985, reinstating the Reyes decision but eliminating the damages imposed by the trial court, since the PVTA officials were "complying with orders of higher authorities to freeze all pending contracts of tobacco pending a re-study, the general rule being that public officers acting within the scope of their authority are not liable on contracts executed in behalf of the government." The appellate court however ruled that Alto was entitled to attorney's fees of P75,000.00, considering the protracted litigation from 1967 wherein several incidents were raised in this Court (p. 98, Rollo).

On the issues raised, the Court of Appeals had ruled that PVTA had failed to comply with the mandatory requirement for perfecting an appeal; hence, the decision became final and executory (p. 95, Rollo, CA Decision); and, on the question of whether the trial court had jurisdiction to set aside its original decision and order a new trial, on December 9, 1970 it stated that this issue had been ruled upon by this Court in L-33368 entitled "Alto Sales Corp. v. Hon. Guardson Lood, et al.," where the petition was dismissed for lack of merit. The appellate court also ruled that Alto had actually filed an application for an export license as called for by the Purchase Agreement; that the application was not acted upon (p. 97, Rollo), was not due to the fault of Alto. The language of the purchase agreement states: "to apply immediately with the Central Bank for an export license." (Italics Ours). This was complied with by Alto but the Central Bank did not act on the application because there was no export license authorizing the export shipment. Alto could not however comply with the requirement because PVTA refused to sell to it the locally produced Virginia Tobacco, i.e. the grant of the export license was under the control of PVTA.

On November 4, 1985, the Court of Appeals reconsidered and set aside the Reyes decision, affirming instead the Lood decision, based on findings that while indeed Alto had delivered to the Central Bank the letter dated October 22, 1965 applying for permit to export 8 million kilos of Virginia Tobacco, the same was not supported by the requisite report of foreign sale, or CB:ED Form No. 101.

Petitioner comes to Us, disputing the jurisdiction of Judge Lood, contending that the Reyes decision had long become final and executory and therefore, Judge Lood no longer had any authority to render another decision on April 8, 1974, in effect rendering irrelevant any further discussion on the merits of the case.

As can be gleaned from the recital of events, the primary issue here is whether or not the Reyes decision has become final and executory. We uphold the finality of the Reyes decision.

The Reyes decision was issued on May 3, 1968. PVTA received a copy of its decision on May 13, 1968. It filed a notice of appeal and appeal bond on May 18, 1968, without any Record on Appeal. On June 4, 1968, however, it withdrew its appeal and appeal bond and instead filed a "Motion to Set Aside the Decision and/or Motion for New Trial." The period for appeal was thus suspended on June 4, 1968 or after the lapse of 22 days from May 13, 1968. Thus, only 8 days remained within which to appeal the decision or up to September 21, 1969. The eight-day period began to run again on September 13, 1969 when PVTA received a copy on September 12, 1969 of the order of Judge Aquino dated September 10, 1969 denying its Motion to Set Aside the decision and/or motion for reconsideration of the decision and/or motion for new trial. PVTA filed a record on appeal on September 17, 1969 in compliance with Rule 41, Secs. 3, 6 and 9 of the then Rules of Court, or specifically without the notice of appeal and appeal bond. This did not suspend the running of the period; hence, the decision became final on September 21, 1969.

We quote with approval from the main decision of Justice Coquia:

".....

". . . The filing on September 17, 1969 by Appellee PVTa of a record on appeal without the notice of appeal and appeal bond did not suspend the running of the period for the decision to become final on September 21, 1969. A record on appeal which does not state that the corresponding notice of appeal and appeal bond had been seasonably filed and subsisting is ineffectual to perfect an appeal. Consequently, the Order of September 23, 1969 issued by Judge Aquino reconsidering its earlier Order dated September 10, 1969 was issued beyond the 30-day period within which to perfect an appeal, thus, making the decision of May 3, 1968 final and executory. It is a rule of law, Section 3, Rule 41 of the Rules of Court that the requisite notice of appeal, appeal bond and record on appeal be all filed in court, and served on the adverse party within thirty (30) days from notice of judgment, deducting the time when a motion for reconsideration is pending; and compliance with this period for appeal is considered absolutely indispensable for the prevention of needless delays and to the orderly and speedy discharge of judicial business, so that if said period is not complied with, the judgment becomes final and executory . . . (Phil. Virginia Tobacco Adm. vs. De Los Angeles; L-29736, October 31, 1974; 60 SCRA 433). Also, perfection of an appeal in the manner and within the period permitted by law is not only mandatory but jurisdictional and failure to perfect an appeal as legally required has the effect of rendering final and executory the judgment of the court below and deprives the appellate court of jurisdiction to entertain the appeal. (Caisip, et al. vs. Cabangon, et al., G.R. Nos. L-14684 and L-14686, Aug. 26, 1960; Babasa vs. Caluag, CA-G.R. No. 31764-R, April 24, 1963). Even granting that the decision of May 3, 1968 had not become final on September 21, 1969 as it had been modified by the Order of Judge Lood dated September 4, 1970, the same became final and executory on October 24, 1970, for appellee PVTa's motion to set aside decision and/or motion for reconsideration did not stay the running of the period within which the decision should become final as the same was pro-forma and was not accompanied by an affidavit of merit." (pp. 95-96, Rollo) (Emphasis Ours)

With Our ruling on the finality of the Reyes decision, there is no longer any need for delving into the merits of the case. Neither is there any basis for the appellate court decision.

On the matter of whether or not the trial court had jurisdiction to set aside its original decision and order a new trial (per its order of December 9, 1970), We do not agree with the appellate court that this issue had been settled in L-33368, April 15, 1971 "Alto Sales Corp. v. Hon. Guardson Lood, et al.", since Our Per Curiam Resolution dated March 6, 1974, (supra) clearly directed that Alto's appeal be given priority, and that all legal and factual issues including the issues as to whether Judge Lood could still set aside Judge Reyes' decision and grant new trial, should be adjudicated.

ACCORDINGLY, We hereby SET ASIDE, both the Resolution of the Court of Appeals dated November 4, 1985 and the original decision dated January 24, 1985 and REINSTATE the Reyes decision as modified in the resolution dated September 4, 1970 of Judge Guardson Lood. No costs. This decision is immediately executory.

SO ORDERED.

Gancayco and Griño-Aquino, JJ., concur.

Narvasa, (Chairman), no part. Related to a person involved.

Cruz, J., no part. Former counsel of petitioner.

[*] (AC-G.R. CV No. 57514 after the implementation of B.P. No. 129.

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