

**SAMHWA COMPANY LTD., AND LOTUS EXPORTS SPECIALISTS, INC.,
PETITIONERS, VS. THE HONORABLE INTERMEDIATE APPELLATE
COURT, LOUIS SHEFF AND HERSCHELL SWIRYN, RESPONDENTS.**

G.R. No. 74305. January 31, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals affirming the trial court's judgment which ordered petitioner Samwha Company Ltd. (Samhwa for brevity) to pay damages to private respondents. The civil action was instituted before the trial court against Samhwa by respondents Louis Sheff and Herschel Swiryn, who were among the original stockholders of a company known as Lotus Export Specialists, Inc. (Lotus, Inc. for brevity).

The antecedent facts of the case as found both by the respondent appellate court and the trial court are as follows:

"On September 28, 1977, the plaintiffs and the other original stockholders sold their shareholdings in said company to Samhwa Company Ltd. The terms of the sale were embodied in a Memorandum of Agreement (Exhibit A) the pertinent provisions of which provided that only 70% of the equity sold would be turned over to Samhwa immediately (par. 3(a) of Exhibit A) and 30% upon release of the personal guarantees and other collaterals stated in paragraph 3(c) of Exhibit A. The personal guarantees referred to in Exhibit A cover the personal guarantees executed by the plaintiffs in favor of the Development Bank of the Philippines, hereinafter referred to as DBP, to guarantee payment of a loan extended by the DBP to Lotus. In addition, the original stockholders and more particularly Mariano Marcos furnished the DBP with 212,980 shares of Marcopper as collaterals for said loan. (In their various pleadings both parties placed the figure at 250,000 shares but Exhibit 3 only states 212,980 shares). After the sale for all intents and purposes, Samhwa took control of the operations of Lotus and the management of said corporation remained in the hands of Samhwa to the exclusion of plaintiffs.

"Under the terms of the Agreement of September 28, 1977 the following provisions were brought to the attention of the Court as part of the evidence and are vital to the consideration of the matters raised in issue (par. 3(c) of Exhibit A):

'1. The primary consideration of this sale is the release of sellers from their individual or personal guarantees and the collateral (250,000 shares of Marcopper Mining Corporation given to the DBP in connection with a loan DBP has extended to Lotus) x x x provided, however, that if, after two years from date of this agreement, the said release of the SELLERS' personal guarantees and collaterals will not have been accomplished, BUYER undertakes to cause Lotus to pay DBP US \$50,000.00 and a further US \$50,000.00 every six (6) months thereafter, aside from payment of the regular amortization schedule due the DBP, until the release of the said personal guarantees and the aforesaid collateral will have been effected or until full payment of the Lotus loan whichever comes first (par. 3(c) of Exhibit A).

'2. Without prejudice to Lotus entering into any arrangements regarding the payment restructuring of all interest,

BUYER undertakes to cause Lotus to pay and keep current all interests on said DBP loan; provided, however, that BUYER shall cause Lotus to pay interest on said loans as and when due, it being understood that any such restructuring as heretofore mentioned will not involve any further monetary or other type of obligation on the part of SELLERS.' (par. 5 of Exhibit A).

Reduced to its simplest terms the above provisions made it incumbent on Samhwa to secure the release of the personal guarantees and collateral posted by the plaintiffs and other original stockholders (par. 3(c) of Exhibit A) in default of which Samhwa undertook to cause Lotus to pay the DBP US \$50,000.00 every six (6) months two years from date of the agreement until the release of the personal guarantees or full payment of the Lotus loan was made. Samhwa also undertook to cause Lotus to pay and keep current all interests on said DBP loan. The other matter raised in the complaint of representation in the Board was not proved or brought up during the hearing and therefore, for all intents and purposes can be disregarded in this decision.

"On the other hand, under paragraph 3(b) of Exhibit A, plaintiffs agreed and stipulated that if the negative net assets value of the company exceeded the amount of P3,375,000.00 then the plaintiffs would pay Samhwa any excess 'at the time of release by the DBP of sellers' personal guarantees and other collaterals.' In addition, plaintiffs also undertook to pay Samhwa the difference between the peso equivalent and foreign currency loan extended by the DBP to Lotus on the basis of prevailing rate of exchange available as of September 28, 1977 but not to exceed P750,000.00 which payment again shall be effected at the time of the release by the DBP of plaintiffs' personal guarantees and other collateral (par. 3, (b)-IV of Exhibit A).

"Time went by and defendants Samhwa and Lotus did not secure the release of the individual and personal guarantees of the plaintiffs despite the fact that on December 10, 1980 under Res. 4083 (par. 7 of Exhibit A) the DBP approved the substitution of the personal guarantees of Louis Sheff, Isabel Wilson, Herschel Swiryn and Alfredo Africa by Samhwa under certain conditions. It also appears from the record that until the time of the trial no payment was made on the principal obligation due the DBP and that defendants allowed the DBP loan to become delinquent (tsn, April 5, 1982; pp. 22-23; pp. 28-29; pp. 32-35). In spite of the fact that the principal obligations due the DBP had not been settled on time and interest payments were delinquent as of the date of the trial Samhwa and Lotus never paid the US \$50,000.00 every six (6) months provided in paragraph 3(c) of Exhibit A. This was admitted by the witness for Samhwa himself, Mr. Sae Chae Lee (tsn, Oct. 22, 1982, pp. 75-78).

"Having failed to compel defendants to comply with their undertakings under Exhibit A, plaintiff brought the present complaint to this court with the prayer that defendants be ordered:

"1. To open its books of account and records for inspection;

"2. To pay the DBP amortization;

"3. To pay interest on the DBP loan;

"4. To deposit US \$200,000.00 with the DBP representing payments due for September 1979, March 1980, September 1980 and March 1981;

"5. To release the personal guarantees of the plaintiffs with the DBP;

"6. To pay plaintiffs damages in the amount of P1,000,000.00; and

"7. Such other relief as this Court may deem just and proper.

"In its Answer to the complaint the defendants, while admitting the existence of Exhibit A, allege that the complaint was malicious and unfounded and was filed to avoid plaintiffs' obligations under the said agreement which was quantified as follows:

"1. Excess of negative net

assets value, under

par. 3(b) of the

Memorandum Agreement P679,950.75

“2. Foreign currency

differential under

par. 3(b)-iv of the

Memorandum of

Agreement 750,000.00

P1,429,950.75

The theory offered by the defendants is that under the provisions of Exhibit A and particularly paragraph 3(b), plaintiffs had to pay defendants the amount of P1,429,950.75 and having failed to do so the defendants did not have to comply with the undertakings stated in the complaint. x x x" (pp. 84-88, Rollo).

On September 2, 1983, the trial court rendered a decision in favor of respondents, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of plaintiffs Louis Sheff and Herschel Swiryn and against defendants Samhwa Company Ltd. and Lotus Exports Specialists Inc. as follows:

“1. That the defendants take immediate steps to maintain the obligation due the DBP in such a manner as to free the plaintiffs from any further liability to the DBP;

“2. That the defendants immediately secure the release of the personal guarantees of the plaintiffs and the collateral of Mr. Mariano Marcos without any further demands on the plaintiffs;

“3. That the plaintiffs upon receipt of the clearances from the DBP turn over to the defendants the 30% equity of Lotus;

“4. That the counterclaims of defendants in the amount of P1,429,950.75 is offset against plaintiffs right of damages against defendants in the amount of P2,250,627.30 so that defendants are jointly and severally ordered to pay plaintiffs the amount of P833,455.35 in actual damages; and

"5. That the defendants are ordered to pay plaintiffs the sum of P150,000.00 as exemplary damages for bad faith and malice in the handling of the matter in issue.

"With costs against the defendants.

"SO ORDERED." (pp. 45-46, Rollo)

Not satisfied with the decision, petitioners appealed to the Court of Appeals. On November 15, 1985, the respondent appellate court rendered judgment affirming the decision of the trial court. On a motion for reconsideration filed by petitioners, the Court of Appeals on April 9, 1986 issued the following resolutions:

“We find that there is sufficient evidence of actual damages, but no sufficient evidence of malice and bad faith.

"WHEREFORE, the Motion for Reconsideration is denied, except that the order for defendants to pay P150,000.00 as exemplary damages to the plaintiffs is ordered deleted from the dispositive portion of the lower court's decision.

"SO ORDERED." (p. 121, Rollo)

Hence, this petition was filed with the petitioners assigning the following errors committed by the respondent appellate court:

"1. Respondent Court has decided a question of substance, not heretofore determined by this Honorable Court, involving the propriety or fairness of an award for actual damages despite the admitted absence of actual proof substantiating pecuniary loss.

"2. Respondent Court has decided in a way not in accord with law or with applicable decisions of this Honorable Court by awarding actual damages based on unsupported allegations, speculations, and conjectures.

"3. Respondent Court has awarded actual damages in an excessive amount despite the fact that private respondents did not incur any actual or additional cost or expense as a consequence of the acts and omissions complained of." (pp. 2-3, Rollo)

The errors assigned by petitioners boil down to the issue of whether or not the award of actual damages made by the trial court and affirmed by the respondent appellate court in favor of respondents Sheff and Swiryn is proper.

Petitioners contend that the actual damages awarded by the trial court in favor of respondents representing guaranty fees which banks normally charge, which in this case amounted to 1,111,663.30, has no legal basis considering that respondents did not suffer any damage resulting from the non-release of their personal guarantees; that respondents did not pay any amount to the DBP on the loan of petitioner Lotus, Inc. nor were they called upon to make good their subsidiary liability on their personal guarantees. Petitioners also submit that those actual damages awarded to respondents equivalent to the value of the Marcopper shares which respondents could have realized if the shares were released by petitioners on time is speculative, there being no proof of the actual value of the shares or of the availability of buyers thereof during said period. Further, as to the difference in the exchange value of US \$50,000 which petitioners committed to pay the DBP every six months pursuant to the memorandum agreement, petitioners argue that this cannot be the basis for awarding damages to respondents since this is also remote and speculative, taking into account again the fact that respondents Sheff and Swiryn were never made to pay any amount on the loan to DBP.

The contract has the force of law between the parties. From the moment the contract is perfected, the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law (Art. 1315, Civil Code). Hence, those who in the performance of their obligations under the contract are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages (Art. 1170, Civil Code).

There is no doubt that petitioners have committed a substantial breach of the contract when they failed without reasonable ground to release respondents Sheffs and Swiryn from their personal guaranties on the loan of petitioner Lotus, Inc. from DBP and when petitioners failed to pay the indebtedness of Lotus, Inc. within the stipulated period as provided in the Memorandum Agreement. In this case, the damages to which said respondents are entitled are governed by Article 2201 of the Civil Code which states:

"Art. 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.

"In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation."

The trial court awarded actual damages in favor of respondents in the form of guaranty fees, loss in the value of

Marcopper shares and the difference in the peso value of US \$50,000.00 payable semi-annually by petitioners to DBP, as well as exemplary damages in the amount of P150,000.00 due to bad faith on the part of petitioners. Except as to the award of exemplary damages, the respondent appellate court affirmed the findings of the trial court as to the award of actual damages. These were their findings:

"It was incumbent upon defendants:

"1. To keep the payment of the principal obligation and interests with the DBP up to date;

"2. To secure within the two-year period stipulated the release of the personal guarantees and collateral of the plaintiffs. They failed in the above to pay US \$50,000.00 every six (6) months starting September 1979. Having failed to perform any of the foregoing under the provision of Articles 1169 and 1181 of the Civil Code quoted above the plaintiffs had no obligation to pay defendants the demanded P1,429,950.75.

"The total obligation to the DBP was P19,762,995.31 (Exhibit F) computed at a conservative 12% per annum from the target date of payment or 2 years after September 18, 1977 or September 1979 to the present or for 3 years and 9 months or 45 months. Plaintiffs' exposure for interest alone to the DBP is equivalent to P8,893,347.87.

"On the other hand, this obligation was restructured as early as December 10, 1980 and April 1, 1981 (Exhibit E & 7) so that in fact DBP has looked primarily to defendants for the payment of the obligation secured by plaintiff's guarantees and collateral. Such being the case it would not be fair to charge defendants for this total interest figure but the fact of the matter is that plaintiffs remained liable to the DBP for the loan subsidiarily and this has a cost of at least 1-1/2% per annum which is what banks charge as a guaranty fee or P1,111,668.30 for the 45 months after September 28, 1979. (Arts. 1191 & 1192, Civil Code of the Philippines)

"In September of 1979 the Marcopper shares had a value of P1,011,665.00 computed at P4.75 per share (Manila Stock Market Price). This is what plaintiffs could have realized from said shares if they had been released at the correct time. The Marcopper shares only fetch P1.20 (price as of July 6, 1983) per share or P255,576.00 for the 212,980 shares. This means a loss to the plaintiffs of P756,089.00.

"On the US \$50,000.00 that defendants committed to pay the DBP every six (6) months the Court agrees with the computation of the plaintiffs that in exchange value alone the plaintiffs were in the amount of P382,870.00 up to September of 1982 computed as follows:

Date

Payment of

US \$

50,000.00 Dollar

should Dollar is

have been was now

made worth or worth or Loss

Sept 1979 P 7.3715 368,575 P 8.95 P 447,500 P78,925.00

March 1980 7.426 371,300 8.95 447,500 76,200.00

Sept 1980 7.5605 378,025 8.95 447,500 69,475.00

March 1981 7.75 387,500 8.95 447,500 60,000.00

Sept 1981 8.02 401,000 8.95 447,500 46,500.00

March 1982 8.2764 413,820 8.95 447,500 33,680.00

Sept 1982 8.5882 429,410 8.95 447,500 18,090.00

P382,870.00

All in all, therefore, on the basis of actual damage plaintiffs lost because of the delay in the settlement of the DBP account the following:

P1,111,668.30 as guaranty cost

756,089.00 on the Marcopper shares

382,870.00 on the dollar difference

2,250,627.30 total

""The above figure more than compensates what could be due defendants on their claim arising out of Exhibit A.

""Plaintiffs did not contest the correctness of the figure of P1,429,950.75 and so it stands uncontroverted and is accepted by the Court as correct.

""When the guarantee and collateral are released, therefore, the said amount becomes due defendants from plaintiffs subject to plaintiffs claim for damages' (pp. 210-213, Original Records)."" (pp. 42-45, Rollo)

We give weight to the factual findings of the respondent appellate court and trial court with respect to the loss suffered by respondents in the value of the Marcopper shares and as to the guaranty fees and difference in the peso equivalent of the sum of US \$50,000.00 that should have been paid semi-annually. Petitioners failed in the performance of their contract, and as provided under the Civil Code, the person who fails in the performance of his obligations shall be subject to indemnify for the losses and damage caused thereby. The true measure of damages for the breach of such a contract is what the private respondents have lost by the breach (*De la Cruz v. Seminario de Manila*, 18 Phil. 330). While the contract imposed no penalty for such violation, this does not grant any of the parties the unbridled liberty to breach it with impunity. Our law on contracts recognizes the principle that actionable injury inheres in every contractual breach (*Boysaw v. Interphil Promotions, Inc.*, No. L-22590, March 20, 1987, 148 SCR 635).

Since the trial court and respondent appellate court found that private respondents did not refute their liability to petitioners under the contract in the amount of P1,429,950.75, this should be set off against the aforesaid damages due to respondents in the amount of P2,250,627.30. Hence, petitioners shall be liable to pay respondents in the amount of P820,676.55.

ACCORDINGLY, the petition is DENIED and the assailed decision of the respondent appellate court dated November 15, 1985 and its resolution dated April 9, 1986 are AFFIRMED. Petitioners Samhwa Company Ltd. and Lotus Exports Specialists Inc. shall be jointly and severally liable to pay respondents Louis Sheff and Herschell Swiryn in the amount of P820,676.55.

SO ORDERED.

Narvasa, C.J., Cruz, and Grino-Aquino, JJ., concur.

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