

**BISAYA LAND TRANSPORTATION CO., INC., ANTONIO V. CUENCO
AND BENJAMIN G. ROA, PETITIONERS, VS. MARCIANO C. SANCHEZ
AND THE HON. INTERMEDIATE APPELLATE COURT, RESPONDENTS.**

G.R. No. 74623, August 31, 1987

Ponente: PADILLA J.

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PADILLA J.:

This is a petition for certiorari to review the decision* of respondent Intermediate Appellate Court, dated 25 April 1986, in AC-G.R. no. CV-01300 which affirmed the decision** of the Regional Trial Court, 7th Judicial Region, Branch XII, Cebu City, dated 14 February 1983, in Civil Case no. R-18830, which was a suit for Specific Performance with Preliminary Injunction and Damages.

Petitioner Bisaya Land Transportation Company, Inc. (BISTRANCO, for short) has been engaged in the shipping business, operating several passenger-cargo vessels, and among the ports of call of these vessels has been Butuan City. As early as 1954, private respondent Marciano Sanchez (Sanchez, for short) was an employee of BISTRANCO, specifically, a quartermaster in one of its vessels. In 1959, he ceased to be an employee as he engaged in stevedoring services in the part of Butuan City and rendered stevedoring services for the vessels of BISTRANCO.[1]

In May 1975, Sanchez was appointed by BISTRANCO as shipping agent in Butuan City for the vessel M/V Don Mariano[2]. The new Butuan City Agent[3] referred to in the letter "Exhibit C" was Marciano Sanchez. Later, on 12 March 1976, when BISTRANCO was under receivership, Sanchez was appointed by its Receiver, Atty. Adolfo V. Amor, as acting shipping agent, also for M/V Dona Remedios, in addition to M/V Dona Filomena, in the port of Butuan City "pending the execution of the formal contract of agency"[4]. When Sanchez was constituted as acting shipping agent, he received the same commission as his predecessor, one ONG YUI, who received 10% for all freight and passenger revenues coming from Butuan City and 5% for all freight going to Butuan[5].

Thereafter, or on 27 July 1976, a formal Contract of Agency, marked as Exhibit "F", was executed between BISTRANCO, represented by Receiver Atty. Adolfo V. Amor and Marciano C. Sanchez, represented by his authorized representative Exequiel Aranas. On 30 July 1976, after Sanchez found that Paragraph 16 of the Contract of Agency was quite prejudicial to him, he executed with BISTRANCO a Supplemental Shipping Agency Contract, marked as Exhibit "6", which was duly signed by Receiver Atty. Adolfo V. Amor on behalf of BISTRANCO and Marciano C. Sanchez himself[6]. But, both the Contract of Agency and the Supplemental Shipping Agency Contract were never submitted by Atty. Adolfo Amor to the receivership court for its approval.

By virtue of the Contract of Agency and the Supplemental Shipping Agency Contract (hereinafter referred to as Contracts), Sanchez performed his duties as shipping agent of BISTRANCO, and he received his corresponding commissions as such shipping agent. Pursuant to the Contracts, Sanchez leased a parcel of land owned by Jose S. Mondejar which was used as the wharf and berthing facilities of BISTRANCO[7]. At an expense of more than

P100,000.00, Sanchez constructed the wharf on the land he leased and the wharf was used to facilitate the loading and unloading of cargoes of the BIS-TRANCO vessels at the port of Butuan City from 1976 to December 1979. Sanchez also constructed a bodega at his wharf for use in connection with the shipping business of BISTRANCO. He constructed an office for the agency and, as of December 1979, he had an office force of 13 employees, all paid and maintained by him.

Sanchez operated six (6) cargo trucks and one (1) jeep for the service of the shipping agency. As shipping agent, Sanchez put up billboards and other forms of advertisement to enhance the shipping business of BISTRANCO. He established good business relations with the business community of Butuan City[8]. In these endeavors, Sanchez succeeded in increasing the volume of the shipping business of BISTRANCO at the Butuan City port, so much so that his earnings on freight alone increased from an average of P8,535.00 a month in 1975 to an average of about P32,000.00 a month in the last seven months of 1979[9].

While the shipping business of BISTRANCO in Butuan City flourished, evidently to the mutual benefit of both parties, on 26 December 1979, co-petitioner Benjamin G. Roa, as Executive Vice-President of BISTRANCO, wrote Sanchez a letter[10] advising him that, effective 1 January 1980, BIS-TRANCO would commence operating its branch office in Butuan City. Prior to this, on 11 December 1979, Sanchez was invited to attend a meeting of the Board of Directors of BISTRANCO wherein he was told by co-petitioner Antonio V. Cuenco that the Board was to open a branch office in Butuan City and he was asked what would be his proposals. Sanchez submitted his proposals in writing, marked as Exhibit "NN", but these were not acceptable to BISTRANCO[11].

Realizing that the letter, marked as Exhibit "FF", was in effect a repudiation of the Contracts, Sanchez filed an action for specific performance with preliminary injunction and damages with the Regional Trial Court of Cebu City on 28 December 1979.

Pursuant to the letter (Exhibit "FF"), BISTRANCO actually opened and operated a branch office in Butuan City on 15 January 1980. BISTRANCO through its new representative contacted the shippers in Butuan City and neighboring towns, advising them to transact their business directly with its new branch office in Butuan City. Under these circumstances, the business of Sanchez, as shipping agent of BISTRANCO in Butuan City, was seriously impaired and under-mined. He could not solicit as many passengers as he used to, because the passenger tickets issued to him by BISTRANCO were limited. The cargoes solicited by Sanchez were loaded on a "chance basis" because those that were solicited by the branch office were given priority.[12]

After due hearing and their respective memorandum filed, the trial court rendered judgment in favor of Sanchez, the dispositive portion of which is quoted here-under[13]:

"WHEREFORE, judgment is hereby rendered declaring the contracts, Exhibits "F" and "G", as valid and binding between the plaintiff and defendant BISTRANCO up to its expiry date on July 27, 1981, and ordering the defendant BIS-TRANCO to pay the plaintiff the total sum of FIVE HUNDRED EIGHTY EIGHT THOUSAND PESOS (P588,000.00) in concept of unearned commissions as well as damages, with interest at the legal rate counted from July 28, 1981 up to the time the amount is fully paid, and the further sum of P15,000.00 as attorney's fees, and the costs of this action.

Thereafter, BISTRANCO appealed to the Court of Appeals which, as heretofore stated, affirmed the decision of the trial court in toto.

Hence this Petition for Certiorari brought to this Court, with the petitioners raising the following issues[14]:

I

CAN A COURT APPOINTED RECEIVER VALIDLY ENTER INTO A CONTRACT WITHOUT COURT APPROVAL?

II

IS THE OPENING BY BISTRANCO OF A BRANCH OFFICE IN BUTUAN CITY A VIOLATION OF THE CONTRACT OF AGENCY AND SUPPLEMENTAL SHIPPING AGENCY CONTRACT (EXHIBITS "F" AND "G") ASSUMING THEM TO BE VALID?

III

WHAT EFFECT DID THE WORKING AGREEMENTS (EXHIBITS "S" AND "U") HAVE ON AFORESAID QUESTIONED CON-TRACTS?

IV

IS THE AWARD FOR UNEARNED COMMISSION AND DAMAGES JUSTIFIED?

The general powers of a court-appointed receiver are provided in Section 7, Rule 59 of the Rules of Court. Under such rule, the receiver is "subject to the control of the court in which the action is pending" and he can "generally do such acts respecting the property as the court may authorize". The act of Receiver Amor in entering into a contract of agency with Sanchez is not one of the acts specifically allowed in the mentioned rule. While such act of Amor may be arguably implied from the power of the receiver to "take and keep possession of the property in controversy", and that the act of Amor is covered by the broad phrase that a receiver can "generally do such acts respecting the property as the court may authorize", still, it is necessary that the acts of the receiver have the approval or authorization of the court which appointed him as a receiver. As held in one case[15], a court-appointed receiver cannot validly enter into a contract without the approval of the court.

What then is the status of the Contracts which Receiver Amor entered into with Sanchez, without the approval of the court which appointed him receiver? Even the petitioners noticeably waver as to the exact status of these Contracts. The petitioners allege in their Memorandum[16] submitted to this Court that they are void contracts under Article 1409(1) of the Civil Code, whereas, in their Petition[17], they labelled the contracts as unenforceable under Article 1403(1) of the Civil Code.

The determination, therefore, of whether the questioned contracts are void or merely unenforceable is important, because of the settled distinction that a void and inexistent contract can not be ratified and become enforceable, whereas, an unenforceable contract may still be ratified and, thereafter, enforced.

The petitioners allege that the Contracts are void, citing Article 1409(1) of the Civil Code which provides that contracts whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy, are in-existent and void from the beginning. In the case at bar, the contracts of agency were entered into for the management and operation of BISTRANCO's business in Butuan City. Said Contracts necessarily imposed obligations and liabilities on the contracting parties, thereby affecting the disposition of the assets and business of the company under receiver-ship. But a perusal of the Contracts in question would show that there is nothing in their cause, object or purpose which renders them void. The purpose of the Contracts was to create an agency for BISTRANCO with Marciano Sanchez as its agent in Butuan City. Even as to the other provisions of the Contracts, there is nothing in their cause or object which can be said as contrary to law, morals, good customs, public order or public policy so as to render them void.

On the other hand, paragraph 1, Article 1403 of the Civil Code provides that contracts "entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers" are unenforceable, unless they are ratified.

In the case at bar, it is undisputed that Atty. Adolfo Amor was entrusted, as receiver, with the administration of BISTRANCO and its business. But the act of entering into a contract is one which requires the authorization of the court which appointed him receiver. Consequently, the questioned Contracts can rightfully be classified as unenforceable for having been entered into by one who had acted beyond his powers, due to Receiver Amor's failure to secure the court's approval of said Contracts.

These unenforceable Contracts were nevertheless deemed ratified in the case at bar, based upon the facts and circum-stances on record which have led this Court to conclude that BISTRANCO had actually ratified the questioned Contracts.

Private respondent Sanchez filed his complaint in the lower court on 28 December 1979. But on 10 January 1980, co-petitioner Benjamin G. Roa, as Executive Vice-President of BISTRANCO, still sent Sanchez three (3) separate letters with the following contents: (1) reducing his passage commission from 10%, as he used to receive in the previous years, to 7 1/2% "as stated in the agency contract dated 27 July 1976;"[18]; (2) advising Sanchez that in view of "his failure to post a bond or such other securities acceptable to the company in the sum of P5,000.00 pursuant to par. 8 of the Contract executed by Sanchez the plaintiff with BISTRANCO on 27 July 1976, we are recalling all unused passage tickets issued your agency" and reminding him (Sanchez) also that "pursuant to par. 2 of aforementioned Contract, solici-tation of cargo and passengers shall be undertaken by you strictly in accordance with the scheduled rules of the Com-pany"[19]; and (3) informing Sanchez that "we (petitioners) are abiding strictly with the terms of the contracts executed between Marciano C. Sanchez and Atty. Adolfo V. Amor in behalf of BISTRANCO, etc. etc."[20]

The three (3) letters of Benjamin G. Roa in effect recognized and gave efficacy to the Contracts in question. The declaration of Benjamin G. Roa that BISTRANCO did not have any knowledge about the Contracts before the complaint was filed on 28 December 1979 is contradicted by his own testimony that, as early as 14 December 1979, he was already looking for the contract, after he saw Exhibit "NN", wherein Sanchez requested the company "to abide with the terms of the contract which will expire on July 1981"[21]. Besides, the pretended lack of knowledge of Benjamin G. Roa can not be equated with BISTRANCO's. It should be noted that Roa started to work for BISTRANCO only on 27 April 1979[22], whereas, the Contracts were executed in 1976.

The people who were more in a position to know about the Contracts, like the company officers and members of the board of directors at the time the Contracts were entered into, especially Antonio V. Cuenco, were never presented as witnesses. Aside from this, the company cannot deny its ratification of the Contracts even before the time of Benjamin G. Roa, because when Atty. Fulveo Pelaez succeeded Atty. Adolfo Amor as Receiver, he was represented by BISTRANCO's shipping manager as having taken cognizance of these Contracts and sanctioned the acts of Sanchez as shipping agent of BISTRANCO in Butuan City. This is shown by a letter[23], dated 15 February 1977, written by Capt. Federico Reyes[24], the shipping manager of BISTRANCO at that time. The letter states that "the Receiver (Atty. Fulveo Pelaez) main-tains that the previous agency contract remains and (sic) basically the same except that the rates of the agency commission were modified".

Furthermore, it is clear that BISTRANCO received material benefits from the contracts of agency of Sanchez, based upon the monthly statements of income of BISTRANCO, upon which the commissions of Sanchez were based[25]. A perusal of the Contracts will also show that there is no single provision therein that can be said as prejudicial or not beneficial to BISTRANCO. As held in *Savings v. Ball-Bearing Chain Co.*[26]:

"Not every act within the letter of an order can be sanctioned, nor everything done without the direction of the court condemned. The tests to be applied are: (1) was the act under investigation within the authority conferred by an order of court? (2) If so, was it performed with reference to the preservation of the estate, as a man of ordinary sagacity and prudence would have performed it under like circumstances? (3) If without authority, was it beneficial to the estate?"

Besides, in our considered opinion, the doctrine of estoppel precludes BISTRANCO from repudiating an obligation voluntarily assumed by it, after having accepted benefits therefrom. To countenance such repudiation would be contrary to equity and would put a premium on fraud or misrepresentation[27], which this Court will not sanction.

Anent the issue of whether the Memorandum of Agreement and the Working Agreement (Exhibits "S" and "U") which were executed by the parties in this case on 4 February 1977 and 28 May 1979, respectively, novated the questioned Contracts, the answer is also in the negative. BISTRANCO avers that Exhibit "S" substantially altered or changed the principal terms and conditions of Exhibits "F" and "G" on material points, such as, reduction of the rate of commission for freight and passage (from 10% to 7 1/27%), the manner of liquidation and remittance of collections of the agent, the mode of payment of the agent's commissions, and the term of the Contract which is from a period of 5 years to a term of 1 year renewable yearly upon mutual consent; and that Exhibit "U", furthermore, bolstered this novation theory.

Novation is not equivalent or synonymous to mere alteration, modification or amendment. Novation is the substitution of a new obligation for an existing or old one, which is thereby extinguished. Novation takes place when the object or principal condition of an obligation is changed or altered.[28] Novation is never presumed; it must be explicitly stated or there must be a manifest incompatibility between the old and the new obligations in every aspect[29]. The test of incompatibility between two obligations or contracts, is whether or not they can stand together, each one having an independent existence. If they cannot, they are incompatible, and the later obligation novates the first.

In the case at bar, it can be deduced that the Agreements, Exhibits "S" and "U", were not meant to novate the herein questioned contracts. Rather, the intent of the parties was to suspend some of the provisions of the Contracts for a period of one (1) year, during which, the provisions of the Agreements will prevail. As par. 8 of the Memorandum of Agreement provides: "It is in this spirit of cooperation with the Receiver to enable him to pay huge obligations of the company that the agent Marciano Sanchez has acceded to the request of Messrs. Miguel Cuenco and Antonio Cuenco to accept the reduction of his commissions". It would not be equitable to Sanchez to say now that the Contracts were extinguished and substituted by the Agreements. It would be tantamount to punishing Sanchez for the concessions he extended to BISTRANCO.

Besides, the changes were not really substantial to bring about a novation. The changes pointed out by BISTRANCO between the Contracts and the Agreements do not go into the essence of the cause or object of the former. Under the Agreements, Sanchez remains the agent of BISTRANCO in Butuan City. There is really no clear proof of incompatibility. In fact, the Contracts and the Agreements can be reconciled. The provisions of the Agreements which were more of changes on how to enforce the agency, prevailed during the period provided in them, but after their expiration, the conditions under the Contracts were implemented again. The term of the agency contract which was for a period of five (5) years still continued, until 27 July 1981.

Considering that the contract of agency and the supplemental shipping agency contract are valid and binding between BISTRANCO and Sanchez, the former's opening of a branch in Butuan City was, in effect, a violation of the Contracts. Sanchez entered into the agency Contract because of the expected income and profits for himself. There could be no other motive from a businessman's point of view. A provision in the Supplemental

Shipping Agency Contract reads:

"6. That in consideration of the fore-going additional particular obligations of the AGENT, the COMPANY agrees not to appoint or employ another agent in Butuan City or in any of the City's neighboring towns without the written consent of the AGENT first obtained." (Exhibit "G")

The additional particular obligations referred to in Exhibit "G" were the putting up of an adequate agency office in Butuan City, the employment of canvassers of passengers and solicitors of cargoes, that the Agent shall provide at least two (2) cargo trucks and a private docking and berthing facilities for the vessels of the company, all at the expense of Sanchez. Aside from this, Sanchez also had to spend for the lease of the wharf and the construction of the bodega at the wharf.

It may be true that there is no express prohibition for BISTRANCO to open its branch in Butuan City. But, the very reason why BISTRANCO agreed not to employ or appoint another agent in Butuan City was to prevent competition against Sanchez' agency, in order that he might recover what he invested and eventually maximize his profits. The opening by BISTRANCO of a branch in Butuan City virtually resulted in consequences to Sanchez worse than if another agent had been appointed. In effect, the opening of a branch office in Butuan City was a violation of the Contracts of agency. Article 1315 of the Civil Code provides:

"Contracts are perfected by mere consent, and from that moment 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."

In the case at bar, good faith required that BISTRANCO refrain from opening its branch in Butuan City during the effectivity of the agency contract with Sanchez, or until 27 July 1981.

Moreover, the opening of the branch office which, in effect, was a revocation of the contracts of agency is not sanctioned by law because the agency was the means by which Sanchez could fulfill his obligations under Exhibits "F" and "G". Article 1927 of the Civil Code, among others, provides: "An agency cannot be revoked if a bilateral contract depends upon it, or if it is the means of fulfilling an obligation already contracted".

As to the issue of whether the award of P588,000.00 to Sanchez for unearned commissions and damages is justified, the answer is also in the affirmative, considering that BISTRANCO violated the Contracts of agency and that Sanchez, before the breach by BISTRANCO of said agency Contracts, was already earning an average monthly commission of P32,000.00, as shown by the statements of commissions prepared by BISTRANCO itself.

WHEREFORE, the petition is denied. The decision of the respondent Court is affirmed.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Paras, and Sarmiento, JJ., concur.

* Penned by Justice Leonor Ines-Luciano with the concurrence of Justices Ramon Gaviola, Jr. and Ma. Rosario Quetulio-Losa.

** Written by Judge Francis J. Militante

[1] Rollo, p. 55

[2] Exhibit "C"

- [3] Exhibit C-1
- [4] Exhibit "E"
- [5] Rollo, p. 56
- [6] Ibid
- [7] Exhibit "H"
- [8] Rollo, p. 57
- [9] Exhibits "12" to "12-M"
- [10] Exhibit "FF"
- [11] Rollo, p. 57
- [12] Ibid, p. 59
- [13] Decision of the Regional Trial Court, p. 9
- [14] Petition, p. 10
- [15] Pacific Merchandising Corporation v. Consolacion Insurance and Surety Co. Inc., et al., L-30204, October 29, 1976, 73 SCRA 564
- [16] Memorandum, p. 11
- [17] Petition, p. 15
- [18] Exhibit "GG", emphasis supplied
- [19] Exhibit "HH", emphasis supplied
- [20] Exhibit "II", emphasis supplied
- [21] T.S.N., p. 15, August 19, 1980
- [22] T.S.N., p. 9, August 20, 1980
- [23] Exhibit "AA"
- [24] T.S.N., p. 18, August 19, 1980
- [25] Exhibits "12"-"12M"
- [26] 118 Iowa 698, 703, 92 N.W. 712
- [27] Pangilinan v. Aguilar, No. L-29275, January 31, 1972, 43 SCRA 151.
- [28] Goni v. CA, No. L-27434, September 23, 1986, 144 SCRA 122
- [29] National Power Corporation v. Dayrit, Nos. L-62845-46, November 25, 1983, 125 SCRA 849

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