

VICENTE CU, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, BRAULIO ABAD AND CAMARO PAINT MANUFACTURING ENTERPRISES, INC., RESPONDENTS.

G.R. No. 75504. April 02, 1991

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

In this petition for review on certiorari, Vicente Cu seeks the reversal and setting aside of the resolution dated September 18, 1985 and July 30, 1986 of the then Intermediate Appellate Court granting the motion filed by respondents Braulio Abad and Camaro Paint Manufacturing Enterprises, Inc. for the reconsideration of the decision of May 31, 1984 affirming in toto the lower court's decision. In effect, the said appellate court entered a new decision dismissing Cu's complaint for a sum of money and accounting.

The records show that Cu did business under the name of Camaro Enterprises. He was engaged in the manufacture and sale of acrylic paints with the trademark of "McGill's & Devices." Said trademark was duly registered in Cu's name under Trademark Certificate Registration No. SR-1150 with the Philippine Patent Office on December 22, 1969.[1]

In anticipation of his projected migration to Canada, on February 9, 1971, Cu sold his business to Abad under the following contract.[2]

"CONTRACT OF SALE

"KNOW ALL MEN BY THESE PRESENTS:

"This contract, made and executed at the City of Manila, Philippines, this 9([th]) day of February, 1971, by and between:

VICENTE CU, Filipino, married, of legal age, and with residence and postal address at 100-C Cordillera St., Quezon City, Philippines, hereinafter referred to as the VENDOR; and

BRAULIO ABAD, Filipino, married, of legal age, and with residence and postal address at 74 San Vicente Street, S.F. del Monte, Quezon City, Philippines, hereinafter referred to as the VENDEE, — and by these presents —

"W I T N E S S E T H :

"WHEREAS, the VENDOR is the sole proprietor of CAMARO ENTERPRISES, a company engaged in the manufacture of Acrylic Paints, with office and factory likewise situated at 100-C Cordillera, Quezon City;

"WHEREAS, the VENDEE has agreed to purchase all the rights and interests over the said firm and the paints brand "McGill's," together with all the furni-tures and stocks of CAMARO ENTERPRISES as of January 15, 1971.

"NOW, THEREFORE, for and in consideration of the sum of ONE HUNDRED FIFTY THOUSAND PESOS

(P150,000.00), Philippine Currency, due and payable upon the signing and for which the corresponding official receipt shall be signed upon receipt thereof, and the VENDOR hereby SELLS, TRANSFERS and CONVEYS unto and in favor of the VENDEE, his heirs, executors, administrators or assigns, the said rights and interests mentioned above, with the following stipulations:

1. That the VENDOR hereby certify (sic) that there are no creditors holding claims due or which shall become due, for, or on account of goods and supplies, merchandise and materials which are part of what is being conveyed, sold and transferred, and that all the properties hereby conveyed are free from liens and encumbrances; PROVIDED, that whatever accounts receivable and payable, or any tax obligations made in the name of CAMARO ENTERPRISES on or before January 15, 1971, as well as goods purchased by VENDOR on or after said date pending receipt by VENDOR of the total con-sideration agreed upon, shall be paid by the VENDEE and/or belong exclusively to said VENDEE;
2. That this sale carried with it the condition that the VENDOR is entitled to ONE PER CENTUM (1%) royalty on the gross sales of all the paints, whether it is acrylic lacquer or enamel, together with its auxil-ary lines, such as primers, thinners or other solvents, putties, additives and waxes; but not on the other products in which the VENDEE is presently engaged or going to engage in the future; including silkscreen paint and others;
3. That it is likewise agreed and covenanted that the VENDEE shall submit to the VENDOR together with the yearly royalty payments, a statement in the form accept-able to the VENDOR, certified as to the accuracy by an independent C.P.A., showing the number and kind of the product manufactured, sold or otherwise disposed of during such year, the sales prices thereof and details of deduction, and the royalty payment due to the VENDOR on account thereof; and
4. That the VENDEE can assign or transfer the rights acquired by virtue of this contract to any person or persons, natural or juridical, provided that prior permission/consent is secured from VENDOR upon showing that the ASSIGNEE is willing and able to assume the obligations created by this contract.

"IN WITNESS WHEREOF we hereunto affixed our signa-tures at the City of Manila, Philippines, this 11([th]) day of February, 1971.

Sgd. Sgd.

VICENTE CU BRAULIO ABAD

Vendor Vendee

Signed in the presence of two witnesses, the contract was duly notarized on February 11, 1971.

Shortly thereafter, Cu left for abroad. After Camaro Paint Manufacturing Enterprises, Inc. (Camaro for short) had been organized and registered, on June 14, 1971, Abad transferred all his rights and interests in the business he had acquired from Cu in favor of said corporation for the amount of P150,000.00 in a document denominated as deed of absolute sale.[3] In said document Abad certified that the business had no creditors and that its properties were free from liens and encumbrances; undertook to surrender to the corporation "all the pertinent documents he had acquired from x x x Camaro Enterprises in connection with the registration of the paint brand McGill's with the PATENT OFFICE and all other letters pertaining thereto for the VENDEE to estab-lish its rights over the registered brand 'McGill's;'" and prom-ised to make himself available should his presence be required by the Patent Office.

Camaro then used the trademark of "McGill's" with the inscriptions "Formula Provided by: John Meek & Associates, Chicago, Illinois" and "Under License From: Camaro Enterprises 56 Eugenio Perez, St., Q.C.[4] in advertising its paint and allied products.[5]

After the declaration of martial law, all firms were required to prove foreign tie-ups.[6] Inasmuch as he had not received from Cu any papers pertaining to the registration of any tie-up with Meek & Associates, on October 25, 1972, Abad wrote Cu a letter requesting for a copy of the contract with Meek and Associates and the registration papers appertaining to said contract.[7] Abad stated therein that said documents had to be supplied by Cu otherwise he would not be able to remit to Cu the 1% royalty stipulated in the contract of sale between them in view of the restrictions of the Bureau of Internal Revenue and the Central Bank.

Cu never replied to said letter. His silence notwithstanding, Camaro provided for Cu's royalties in its financial statements: P2,261.42 for 1971, P4,431.48 for 1972 and P7,964.74 for 1973.[8] On April 4, 1975, Abad formally assigned the rights he had acquired from Cu over the trademark of "McGill's & Devices" to Camaro of which Abad was, at that time, also the president.[9]

Meanwhile, in 1974, Cu executed a special power of attorney in favor of Mauro M. Castro extending to the latter the general control and supervision over his business and property in the Philippines.[10] Pursuant to said power of attorney, on June 13, 1974, Castro demanded from Abad the payment to Cu of the 1% royalty stipulated in the February 11, 1971 contract for the years 1971 to 1973.[11] In his reply to said letter, Abad said:

"We are willing to fulfill our part of the contract but we also ask your client to do the same — fulfill his commitment. You will note in our Deed of Sale that we agreed to give him a royalty of 1%. It is a common knowledge that royalty paid should be in exchange of a certain service and it was our agreement that while in the United States he will work for us for the registration papers, license, etc. Naturally, he will incur expense in moving around to fulfill this obligation and that is where the 1% came in although it was not written on the contract what it is for. Mr. James Cu, his father, and Messrs. Noah and Tommy Cu, his brothers, can testify to the veracity of this agreement verbally entered into between me and my associates and Vicente Cu. I will hand this letter to you personally and can further elaborate on the subject at that time."

Abad added that they had discontinued advertising that they were associated with Meek & Associates and had to destroy and throw away the labels mentioning said foreign company for fear of being accused of misrepresentation.[12]

Apparently, Castro and Abad failed to arrive at an agreement regarding the payment of the 1% royalty because on July 2, 1975, Castro filed for Cu in the Court of First Instance of Rizal, a complaint against Abad and Camaro praying for an accounting of the sales of the corporation's products from January 16, 1971 to December 31, 1974 and for the payment of the sum of P33,000.62 allegedly the total amount of the royalties due Cu as of December 31, 1974 as well as moral, nominal and exemplary damages and attorney's fees.[13]

In their answer, Abad and Camaro alleged that the contract of February 11, 1971 which was hastily prepared by Cu, failed to express the true intent and agreement of the parties as it did not incorporate the following "representations and warranties" of Cu: (a) the sale included the right of tie-up with Meek & Associates which Cu had warranted as valid and existing at the time of the sale, that the vendees could advertise such connection and that they would receive from time to time new or improved formula for their acrylic paint products; (b) the total contract price of P150,000 actually included the amount of P80,000 which Cu allegedly spent for the acquisition of his right to a tie-up with Meek & Associates; (c) upon his arrival in the United States, Cu would make the necessary arrangements with Meek & Associates and later forward to the defendants the corresponding licensing agreement with said foreign entity; (d) the 1% royalty on annual gross sales was to cover the royalty to Meek & Associates for the defendants' continued enjoyment of the said right of tie-up as well as the plaintiff's "moving expenses" in the renewal of the licensing agreement with said foreign entity.

The defendants prayed that paragraphs 2, 3 and 4 of the contract of sale be declared rescinded and null and void ab initio; and that the plaintiff be required to pay the defendants the following amounts: (a) P80,000 which was

"fraudulently obtained by the plaintiff from the defendants through false representation," with interest from February 11, 1971 until fully paid; (b) P2,500 as indemnity for the labels which defendants had to discard; (c) moral and exemplary damages, and (d) P10,000 as reasonable attorney's fees.[14]

On January 22, 1979, the lower court[15] rendered a decision which in part reads:

"Upon due consideration of the evidence, the Court finds unsupported defendants' theory that plaintiff had assumed to work for the renewal of a licensing agreement. The contract of sale (Exh. 'B') is totally bereft of any mention of this alleged licensing agreement. If indeed there was such agreement, the defendants would not have allowed such an important item to be missed as a condition. Even the sale from defendant Abad to defendant Camaro (Exh. '13') of the business acquired from plaintiff does not mention any licensing agreement with John Meek & Associates. In fact the very labels used by plaintiff and continued to be used by the defendants only mentioned that the formula for the paint and allied products manufactured by them was formulated by John Meek & Associates. It was never mentioned therein that the paint and its allied products were being manufactured under license from John Meek & Associates. The paint carried the duly registered trademark 'McGill's' which plaintiff duly assigned to the defendants including the formula. Defendants admit that nobody has ever questioned them in the use of the trademark and of the formula. The Court concludes that the 1% royalty must have been the consideration for defendants' continued use of the trademark and the formula.

"The alleged 'goodwill' could not have been for an alleged obligation assumed by the plaintiff for the renewal of a licensing agreement which at the outset did not exist and was never incorporated in the contract of sale. It is generally understood that 'goodwill' is the standing or degree of acceptance of the product by the public. When plaintiff sold the business of the Camaro Enterprises, the acrylic paint sold under the trademark 'McGill's' had already found wide acceptance as a good paint. Defendants, in recognition of the goodwill of plaintiff's business, had even seen fit to carry the name 'Camaro' in the new corporation formed by it to take over the said business. Also, the Court particularly notes the contradiction in defendant Abad's and Lim Siong's testimonies. While defendant Abad stated that the goodwill of plaintiff's business was valued at P80,000, Lim Siong testified that its value was P100,000. This only lends support to plaintiff's theory that the alleged 'licensing agreement' was an after-thought on the part of the defendants in trying to evade their obligation to pay plaintiff his 1% royalty on gross sales.

"While attorney's fees must be conceded plaintiff, there is no sufficient evidence to warrant the award of moral and/or exemplary damages.

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

1. Defendants are held jointly and severally liable to plaintiff in the amount of P33,000.62, allegedly due the plaintiff as of December 31, 1974, plus such further amount as may be found to be due him as will be shown by the statements of accounting that the defendants will render and submit pursuant to the contract of sale marked Exh. '8' with interest thereon at the legal rate beginning December 31 for the corresponding year when it must have been due until fully paid;
2. Defendants are ordered to render or submit to plaintiff complete and accurate yearly accountings, duly certified to by a certified public accountant and showing the gross sales of goods or products covering the period from January 16, 1971 to December 31, 1978 and every year thereafter;
3. Defendants are held jointly and severally liable to plaintiff in the amount of P10,000.00 for attorney's fees plus the costs of suit.

"Accordingly, defendants' counterclaims are dismissed.

"SO ORDERED." [16]

The defendants appealed to the then Intermediate Appellate Court which, in its decision[17] of May 31, 1984, affirmed in toto the decision of the lower court.

Abad and Camaro received a copy of the appellate court decision on June 21, 1984. On the 15th day thereafter, or on July 6, 1984, they filed a motion for a 30-day extension of time to file a motion for reconsideration.

On August 6, 1984 or a day after the expiration of the extended period of time, Abad and Camaro filed another motion for a 15-day extension of time to file the motion for reconsideration. One day after the expiration of said period or on August 22, 1984, Abad and Camaro filed the said motion for reconsideration asserting that Cu was not entitled to the 1% royalty as their consent to the contract was obtained "through fraud and false representation" thereby nullifying said stipulation "for want of any valid consideration." [18]

Alleging that there were "persuasive facts and evidence on record" that had been overlooked in arriving at its decision, on September 18, 1985, the appellate court granted the motion for reconsideration. The dispositive portion of the resolution[19] states:

"WHEREFORE, appellants' motion for reconsideration should be as it is hereby granted. The decision promulgated on May 31, 1984 is hereby reconsidered and set aside, and a new one is hereby entered, reversing the decision of the lower court appealed from and dismissing appellee's complaint; and on the counterclaim, ordering the appellee to refund to appellants the sum of P80,000.00 with interest thereon from February 11, 1971 until fully paid, and to pay appellants the sum of P10,000.00 as attorney's fees, plus costs.

"SO ORDERED."

Cu filed a motion for the reconsideration of said resolution which was duly opposed by Abad and Camaro. On July 30, 1986, the appellate court denied for lack of merit said motion for reconsideration. It stated further that "(A)ll the matters therein were squarely presented, exhaustively ventilated and carefully considered" before it promulgated the resolution of September 18, 1985. Justices Porfirio V. Sison, Jorge R. Coquia and Ma. Rosario Quetulio-Losa (who substituted for the late Justice Marcelino Veloso) voted for such denial while Justices Desiderio P. Jurado and Abdulwahid A. Bidin dissented in a separate opinion penned by the former but which mainly quoted Cu's contentions in his motion for reconsideration.[20]

Hence, Cu interposed the instant petition for review on certiorari submitting to this Court these issues: (a) whether or not the May 31, 1984 decision had become final and executory in view of this Court's ruling in *Habaluyas vs. Japson*[21] that the 15-day period to file a motion for reconsideration cannot be extended; and (b) granting that the May 31, 1984 decision was not yet final and executory, whether or not the appellate court erred in arriving at the conclusion that Cu "employed the degree of active and vitiating fraud that effectively severed the binding terms" of the February 11, 1971 contract.

We need not delve on the first issue raised by petitioner. Suffice it to say that the *Habaluyas* decision had been given a prospective application in the resolution of May 30, 1986 in the same case[22] meaning that it would apply only after June 30, 1986[23] and therefore, compliance with the said ruling case had not yet been strictly enforced when the motions for extension of time herein questioned were filed. That at least two such motions were filed a day after the expiration of the previously extended periods should not, in the interest of justice, likewise detain us further in resolving the second issue raised considering that we find the same to be meritorious.

Petitioner contends herein that no fraud or insidious words or machinations vitiated the consent of private respondent Abad as to be a cause for the annulment of the contract of February 11, 1971. On the other hand, private respondents assail the validity of said contract specifically the provision therein for a 1% royalty on gross sales on the ground that the same was obtained through false and insidious representations. They aver that Abad

entered into the said contract on the belief that there was a tie-up between petitioner and Meek & Associates and when the said tie-up subsequently proved to be non-existent, the stipulation for a 1% royalty became "null and void for want of any valid consideration." [24]

A contract is the law between the parties. It is deemed to contain all agreements arrived at by them. Hence, Section 7, Rule 130 [25] of the Rules of Court provides:

"Sec. 7. Evidence of Written Agreements. - 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, except in the following cases:

- a) When a mistake or imperfection of the writing or its failure to express the true intent and agreement of the parties, or the validity of the agreement is put in issue by the pleadings;
- b) Where there is an intrinsic ambiguity in the writing.

"The term 'agreement' includes wills."

This provision is based on the presumption that the parties had made a written instrument the only repository and memorial of the truth and whatever is not found in said instrument must have been waived and abandoned by the parties. [26] Thus, while parol evidence is admissible in a variety of ways to explain the meaning of written contracts, it cannot serve the purpose of incorporating into the contract additional contemporaneous conditions which are not mentioned at all in the writing unless there has been fraud or mistake. [27]

Article 1338 of the Civil Code provides that "(t)here is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to." Allegations of fraud must, however, be established by clear and convincing evidence. [28] Mere preponderance of evidence is not sufficient. [29] In this case, private respondents failed to measure up to this requirement.

While Abad and Camaro stated in their answer to the complaint the allegedly unincorporated stipulations in the February 11, 1971 contract, they had not backed up said allegations by convincing evidence. Not one evidence was ever presented clearly pointing to the alleged machinations of Cu which enticed Abad to enter into the contract. The pieces of evidence consisting of the indorsement of the Philippine Vice-Consul in Chicago, Illinois to the effect that John Meek & Associates [30] was a non-entity insofar as the Association of Commerce and Industry was concerned (Exh. 11-A) and a certification from the Office of the Quezon City Mayor to the effect that Cu did not secure a permit for the manufacture and sale of acrylic paint products, do not really bolster their position that the contract did not reflect the true intent of the parties or that it was vitiated by fraud on the part of Cu. Even Abad's testimony was not of much help. In fact, he admitted that he and Camaro did not really see the "necessity" of the contract between Cu and John Meek & Associates until the issuance of Presidential Decree No. 49. [31]

All these point to the fact that the respondents' allegations of fraud and the noninclusion of their true intent in the contract were devised meant to avoid paying the 1% royalty to Cu. Had they really meant to nullify the stipulation on the said royalty, they could have done so by initiating an action to annul the same when they learned of the inexistence of a contract between Cu and Meek & Associates. They could not have waited for Cu to file an action for the enforcement of said stipulation. Indeed, with the kind of business respondents were doing which certainly reflect good business acumen on their part, they could not have missed on important agreements which would entail diminution of their income.

WHEREFORE, the resolutions of the respondent court dated September 18, 1985 and July 30, 1986 are hereby reversed and set aside and the decision of May 31, 1984 reinstated. Costs against the private respondents.

SO ORDERED.

Gutierrez, Jr., Feliciano, and Davide, Jr., JJ., concur.

Bidin, J., No part, participated in the appealed decision as a member of respondent court.

[1] Exhs. D, D & D-1.

[2] Exh. B.

[3] Exh. 13.

[4] Exhs. I-1 & I-2.

[5] Exhs. G, G-1 & G-2.

[6] This requirement was allegedly based on Presidential Decree No. 49 on the protection of intellectual property.

[7] Exh. 2.

[8] Rollo, p. 69.

[9] Exh. E, E-1.

[10] Exh. A.

[11] Exh. 8.

[12] Exh. 9.

[13] Civil Case No. Q-20247.

[14] Original Record on Appeal, pp. 12-13.

[15] Presided by Judge Eduardo C. Tutaan.

[16] Rollo, pp. 90-91.

[17] Penned by Justice Desiderio P. Jurado and concurred in by Justices Porfirio V. Sison, Abdulwahid A. Bidin and Marcelino R. Veloso.

[18] Rollo, p. 125.

[19] Penned by Justice Porfirio V. Sison and concurred in by Justices Marcelino R. Veloso and Jorge R. Coquia. Justices Desiderio P. Jurado and Abdulwahid A. Bidin voted for the denial of the motion for reconsideration on the ground that the matters raised therein had been threshed out and resolved in the decision.

[20] Rollo, pp. 79-84.

[21] G.R. No. 70895, August 5, 1985, 138 SCRA 46.

[22] 142 SCRA 208.

[23] Singh vs. Intermediate Appellate Court, G.R. No. 74108, February 27, 1987, 148 SCRA 277.

[24] Memorandum, pp. 18-19.

[25] Now Section 9 of Rule 130 under the Revised Rules on Evidence which took effect on July 1, 1989.

[26] Moran, Comments on the Rules of Court, Vol. V, 1980 ed., p. 101.

[27] De la Rama vs. Ledesma, L-28498, July 14, 1986, 143 SCRA 1 citing Yu Tek & Co. vs. Gonzales, 29 Phil. 384.

[28] Carenan vs. Court of Appeals, G. R. No. 84358, May 31, 1989, 173 SCRA 711.

[29] Centenera vs. Garcia Palicio, 29 Phil. 470.

[30] In his affidavit of October 20, 1975, which the plaintiff presented as Exhibit H, John Meek stated that he was a chemical engineer employed as operations manager of the Institute of Gas Technology in Chicago; that he furnished his brother-in-law, Vicente Cu, a basic formulation for acrylic automotive paint; and that he authorized Cu “to use the said formulation for commercial purposes, along with the right to the use of (his) name for purposes related to said formulation, including production and sale” in the Philippines and other places as Cu might deem fit and proper.

[31] TSN, June 16, 1977, p. 14.

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