

## THIRD DIVISION

[ G.R. No. 192797, April 18, 2018 ]

**EXCELLENT ESSENTIALS INTERNATIONAL CORPORATION,  
PETITIONER, V. EXTRA EXCEL INTERNATIONAL PHILIPPINES,  
INC., RESPONDENT.**

### D E C I S I O N

**MARTIRES, J.:**

We resolve the petition for review on certiorari assailing the 28 June 2010 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 88388. The CA decision, in effect, reversed the Regional Trial Court, Branch 138, Makati City (*RTC, Branch 138*), by ordering petitioner Excellent Essentials International Corporation (*Excellent Essentials*) to pay respondent Extra Excel International Philippines, Inc. (*Excel Philippines*) damages, attorney's fees, and costs of suit.

### FACTUAL ANTECEDENTS

The present controversy started from a complaint filed by E. Excel International, Inc. (*Excel International*) and Excellent Essentials against Excel Philippines for damages and to enjoin the latter from selling, distributing, and marketing E. Excel products in the Philippines.

On 9 August 1996, Excel International and Excel Philippines entered into an exclusive rights contract wherein the latter was granted exclusive rights to distribute E. Excel products in the Philippines.<sup>[2]</sup> Under the same contract, Excel International reserved the right to discontinue or alter their agreement at any time.<sup>[3]</sup>

Over the span of four (4) years, Excel International experienced intra-corporate struggle over the control of the corporation and the operations of its various exclusive distributors in Asia. The dispute even reached the Judicial District Court of Utah (*Utah Court*). Eventually, the conflict between the principal stakeholders of Excel International, Jau-Hwa Stewart (*Stewart*) and Jau-Fei Chen (*Chen*), took a turn and Stewart somehow succeeded in gaining control of the company.

On 1 December 2000, Stewart, in her capacity as president of Excel International, revoked Excel Philippines' exclusive rights contract and appointed Excellent Essentials as its new exclusive distributor in the Philippines.<sup>[4]</sup>

Despite the revocation of its exclusive rights contract and the appointment of Excellent Essentials, Excel Philippines continued its operation in violation of the new exclusive distributorship agreement. Thus, on 26 January 2001, Excel International, through counsel, demanded that Excel Philippines cease from selling, importing, distributing, or advertising, directly or indirectly, any and all of E. Excel products.<sup>[5]</sup>

With its demand unheeded, Excel International and Excellent Essentials filed a complaint for injunction and damages against Excel Philippines. The complaint was originally filed before the RTC, Branch 56, of Makati City (*RTC, Branch 56*).<sup>[6]</sup>

On its part, Excel Philippines filed its answer with counterclaims saying that Excel International had no right to unilaterally revoke its exclusive right to distribute E. Excel products in the Philippines. Attached to its answer was an agreement dated 22 May 1995 between Excel International and Bright Vision Consultants, Ltd. (*Bright Vision*) showing that Excel Philippines' exclusive distributorship was irrevocable.<sup>[7]</sup> In fact, it was because of this agreement that Excel Philippines was incorporated so that it would become Excel International's exclusive distributor within the Philippines. Pertinent portions of this agreement read:

### **AGREEMENT**

THIS AGREEMENT is made [on] the 22nd day of May 1995 by and between E. Excel International, Inc., a company registered in the State of Utah, USA (hereinafter referred to as "E. Excel USA") and Bright Vision Consultants Limited, a company registered in British Virgin Islands with Registration No. 133985 (hereinafter referred to as "BV").

### **WHEREAS:**

1. E. Excel USA manufactures, markets and/or distributes the products, including but not limited to nutritional supplements, herbal foods, skin care products, and household products (hereinafter referred to as "Products"). The term "Product" means all products manufactured, marketed and distributed by E. Excel USA under the name and style of E. Excel USA's company name and/or its logo.
2. BV desires to invest and establish a new company with other shareholders in the Philippines for the sole purpose of distributing the Products in the Philippines.
3. The shareholders of BV have considerable marketing experience of the Products in other countries, and have [a] long term working relationship with E. Excel USA.
4. BV shall be the majority shareholder of the new company in the Philippines.
5. E. Excel USA desires to market the Products in the Philippines through the New Company.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants herein set forth, E. Excel USA and BV agree as follows:

### **1. FORMATION OF NEW COMPANY**

- 1.1 Within six months from the date of this Agreement, BV shall form or help with the formation and establishment of

a new company for the sole purpose of distributing the Products of E. Excel USA.

1.2 The name of the new company shall be Extra Excel International Philippines Inc. (herein referred to as the "New Company").

1.3 The New Company may be jointly owned by shareholders other than BV, however, BV shall be the majority shareholder.

## **2. BUSINESS PURPOSE OF THE NEW COMPANY**

The formation of the New Company shall be for the following business purposes:

2.1 Distributing exclusively the Products licensed/manufactured by E. Excel USA in the Philippines.

2.2 Promote, advertise, and build up the brand name of the Products of E. Excel USA.

2.3 Train and recruit sales force and/or distributors for the Products of E. Excel USA.

2.4 Build a network of consumers for the Products of E. Excel USA.

2.5 Set up head office, and branch offices and/or training centers and/or distributing centers as may be necessary for the Products in the Philippines.

2.6 Warehouse and maintain necessary stock of the Products for the distributors/consumers.

2.7 Be responsible for all the costs and expenses relating to all promotional and marketing expenditure relating to the distribution of the Products in the Philippines.

## **3. APPOINTMENT OF EXCLUSIVE DISTRIBUTOR**

3.1 Upon formation of the New Company, the New Company shall automatically become E. Excel USA's "Authorized Exclusive Distributor."

3.2 E. Excel hereby agrees to grant the New Company the irrevocable and exclusive right to distribute, market and/or sell the Products of E. Excel USA in the Philippines. The New Company shall be entitled to describe itself as E. Excel USA's "Authorized Exclusive Distributor" for its Products in the Philippines.

- 3.3 E. Excel USA also hereby authorizes and gives an exclusive, irrevocable license to the New Company the right to use its patents, trademarks, logo, designs, product formulations, copyrights, service marks, business and trade names, research and development and any other rights of a similar nature.
- 3.4 E. Excel USA shall not directly and/or indirectly appoint any other person, firm or company other than the New Company, as a distributor, seller and/or agent for its Products in the Philippines or to sell, supply and/or distribute to any other person, firm or company any of its Products, whether for use or resale in the Philippines.
- 3.5 E. Excel USA shall not directly and/or indirectly sell or appoint any other person, firm or company in any other country, other than the New Company, to cause a resale of the Products or export of the Products into the Philippines.
- 3.6 This license of Exclusive Distributorship shall continue in force until the 21st day of May 2005. At the expiration of the period stipulated, the New Company shall have the sole and exclusive right to renew this Exclusive Distributorship for another ten (10) years by giving E. Excel USA a written notice at least six (6) months before the expiration of this Exclusive Distributorship.
- 3.7 The validity of this Exclusive Distributorship is also subject to the New Company fulfilling the sales volume requirement as designated by E. Excel USA and specified in clause 3.8.
- 3.8 The New Company shall need to fulfill a minimum sales volume of 200,000,000 pesos per year starting 1997 to maintain its exclusive distributorship with E. Excel USA. Sales volume means the amount of sales in Philippine currency, Peso, of all the Products that are sold by the New Company's network of sales force in the Philippines, i.e., the price at which the Products are sold by the New Company to its sales network and/or consumer and/or distributors.
- 3.9 This exclusive distributorship awarded by E. Excel USA to the New Company may not be modified, transferred or terminated except by an instrument in writing signed by the duly authorized representative of E. Excel USA, and BV.

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## **7. DURATION AND TERMINATION OF AGREEMENT**

- 7.1 This agreement shall come into force on the 22nd day of May 1995 and shall continue in force until the 21st day of

May 2005. At the expiration of the period stipulated, BV shall have the sole and exclusive right to renew this agreement for another ten (10) years by giving E. Excel USA a written notice at least six (6) months before the expiration of this Agreement.

7.2 The validity of this Agreement is also subject to the New Company fulfilling the sales volume requirement as designated by E. Excel USA and specified in clause 3.8.

7.3 Unless otherwise mutually agreed upon between E. Excel USA and BV, neither party may terminate and/or revoke this Agreement until the expiry of the Agreement referred to in clause 7.1.

7.4 In the event of breach of this Agreement by E. Excel USA, E. Excel USA shall pay liquidated damages to either BV or the New Company (to be solely determined by BV) equal to 20% of the sales volume of the previous Agreement Year before the breach of the Agreement. Agreement Year means the period of 12 months from the date of this Agreement and each subsequent consecutive period of 12 months during the period of this Agreement. Nothing contained in this clause shall preclude BV or the New Company from demanding that E. Excel USA perform the obligations imposed in this Agreement until the expiry and/or optional renewal of this Agreement.

7.5 In the event that the New Company is not able to fulfill the sales volume as designated in Clause 3.8, BV, as the major shareholder of the New Company, warrants to E. Excel USA that it will ensure the New Company turns over to E. Excel USA all its trained [sales] network of distributors, and return to E. Excel USA any of its trademarks, logos and any other information related to the Intellectual Property of E. Excel USA. E. Excel USA shall have the right to appoint another agent, company or individual as its sole exclusive distributor of the Products in the Philippines.

## **8. NATURE OF AGREEMENT**

8.1 E. Excel USA acknowledges that BV shall be the majority shareholder of the New Company, and that the New Company shall have other shareholders, therefore, in consideration of the mutual covenants herein set forth, E. Excel USA acknowledges that this Agreement may not be modified or changed by any representative of the New Company. This Agreement can only be modified by an instrument in writing signed by duly authorized representatives of both E. Excel USA and BV.

8.2 The Exclusive Distributorship, the right to use of Intellectual Property and any other rights given to the New