

SECOND DIVISION

[G.R. No. 167519, January 14, 2015]

**THE WELLEX GROUP, INC., PETITIONER, VS. U-LAND AIRLINES,
CO., LTD., RESPONDENT.**

DECISION

LEONEN, J.:

This is a Petition^[1] for Review on Certiorari under Rule 45 of the Rules of Court. The Wellex Group, Inc. (Wellex) prays that the Decision^[2] dated July 30, 2004 of the Court of Appeals in CA-G.R. CV No. 74850 be reversed and set aside.^[3]

The Court of Appeals affirmed the Decision^[4] of the Regional Trial Court, Branch 62 of Makati City in Civil Case No. 99-1407. The Regional Trial Court rendered judgment in favor of U-Land Airlines, Co., Ltd. (U-Land) and ordered the rescission of the Memorandum of Agreement^[5] between Wellex and U-Land.^[6]

Wellex is a corporation established under Philippine law and it maintains airline operations in the Philippines.^[7] It owns shares of stock in several corporations including Air Philippines International Corporation (APIC), Philippine Estates Corporation (PEC), and Express Savings Bank (ESB).^[8] Wellex alleges that it owns all shares of stock of Air Philippines Corporation (APC).^[9]

U-Land Airlines Co. Ltd. (U-Land) "is a corporation duly organized and existing under the laws of Taiwan, registered to do business . . . in the Philippines."^[10] It is engaged in the business of air transportation in Taiwan and in other Asian countries.^[11]

On May 16, 1998, Wellex and U-Land entered into a Memorandum of Agreement^[12] (First Memorandum of Agreement) to expand their respective airline operations in Asia.^[13]

Terms of the First Memorandum of Agreement

The preambular clauses of the First Memorandum of Agreement state:

WHEREAS, U-LAND is engaged in the business of airline transportation in Taiwan, Philippines and/or in other countries in the Asian region, and desires to expand its operation and increase its market share by, among others, pursuing a long-term involvement in the growing Philippine airline industry;

WHEREAS, WELLEX, on the other hand, has current airline operation in the Philippines through its majority-owned subsidiary Air Philippines International Corporation and the latter's subsidiary, Air Philippines Corporation, and in like manner also desires to expand its operation in the Asian regional markets, a Memorandum of Agreement on _____, a certified copy of which is attached hereto as Annex "A" and is hereby made an integral part hereof, which sets forth, among others, the basis for WELLEX's present ownership of shares in Air Philippines International Corporation.

WHEREAS, the parties recognize the opportunity to develop a long-term profitable relationship by combining such of their respective resources in an expanded airline operation as well as in property development and in other allied business activities in the Philippines, and desire to set forth herein the basic premises and their understanding with respect to their joint cooperation and undertakings.^[14]

In the First Memorandum of Agreement, Wellex and U-Land agreed to develop a long-term business relationship through the creation of joint interest in airline operations and property development projects in the Philippines.^[15] This long-term business relationship would be implemented through the following transactions, stated in Section 1 of the First Memorandum of Agreement:

(a) U-LAND shall acquire from WELLEX, shares of stock of AIR PHILIPPINES INTERNATIONAL CORPORATION ("APIC") equivalent to at least 35% of the outstanding capital stock of APIC, but in any case, not less than 1,050,000,000 shares . . . [;]

(b) U-LAND shall acquire from WELLEX, shares of stock of PHILIPPINE ESTATES CORPORATION ("PEC") equivalent to at least 35% of the outstanding capital stock of PEC, but in any case, not less than 490,000,000 shares . . . [;]

(c) U-LAND shall enter into a joint development agreement with PEC . . . [; and]

(d) U-LAND shall be given the option to acquire from WELLEX shares of stock of EXPRESS SAVINGS BANK ("ESB") up to 40% of the outstanding capital stock of ESB . . . under terms to be mutually agreed.^[16]

I. Acquisition of APIC and PEC shares

The First Memorandum of Agreement stated that within 40 days from its execution date, Wellex and U-Land would execute a share purchase agreement covering U-Land's acquisition of the shares of stock of both APIC (APIC shares) and PEC (PEC shares).^[17] In this share purchase agreement, U-Land would purchase from Wellex its APIC shares and PEC shares.^[18]

Wellex and U-Land agreed to an initial purchase price of P0.30 per share of APIC

and P0.65 per share of PEC. However, they likewise agreed that the final price of the shares of stock would be reflected in the actual share purchase agreement.^[19]

Both parties agreed that the purchase price of APIC shares and PEC shares would be paid upon the execution of the share purchase agreement and Wellex's delivery of the stock certificates covering the shares of stock. The transfer of APIC shares and PEC shares to U-Land was conditioned on the full remittance of the final purchase price as reflected in the share purchase agreement. Further, the transfer was conditioned on the approval of the Securities and Exchange Commission of the issuance of the shares of stock and the approval by the Taiwanese government of U-Land's acquisition of these shares of stock.^[20]

Thus, Section 2 of the First Memorandum of Agreement reads:

2. Acquisition of APIC and PEC Shares. - Within forty (40) days from date hereof (unless extended by mutual agreement), U-LAND and WELLEX shall execute a Share Purchase Agreement ("SHPA") covering the acquisition by U-LAND of the APIC Shares and PEC Shares (collectively, the "Subject Shares"). Without prejudice to any subsequent agreement between the parties, the purchase price for the APIC Shares to be reflected in the SHPA shall be THIRTY CENTAVOS (P0.30) per share and that for the PEC Shares at SIXTY FIVE CENTAVOS (P0.65) per share.

The purchase price for the Subject Shares as reflected in the SHPA shall be paid in full upon execution of the SHPA against delivery of the Subject Shares. The parties may agree on such other terms and conditions governing the acquisition of the Subject Shares to be provided in a separate instrument.

The transfer of the Subject Shares shall be effected to U-LAND provided that: (i) the purchase price reflected in the SHPA has been fully paid; (ii) the Philippine Securities & Exchange Commission (SEC) shall have approved the issuance of the Subject Shares; and (iii) any required approval by the Taiwanese government of the acquisition by U-LAND of the Subject Shares shall likewise have been obtained.^[21]

II. Operation and management of APIC/PEC/APC

U-Land was "entitled to a proportionate representation in the Board of Directors of APIC and PEC in accordance with Philippine law."^[22] Operational control of APIC and APC would be exercised jointly by Wellex and U-Land "on the basis of mutual agreement and consultations."^[23] The parties intended that U-Land would gain primary control and responsibility for the international operations of APC.^[24] Wellex manifested that APC is a subsidiary of APIC in the second preambular clause of the First Memorandum of Agreement.^[25]

Section 3 of the First Memorandum of Agreement reads:

3. Operation/Management of APIC/APC. - U-LAND shall be entitled to a proportionate representation in the Board of Directors of APIC and PEC in accordance with Philippine law. For this purpose, WELLEX shall cause the resignation of its nominated Directors in APIC and PEC to accommodate U-LAND's pro rata number of Directors. Subject to applicable Philippine law and regulations, operational control of APIC and Air Philippines Corporation ("APC") shall be lodged jointly to WELLEX and U-LAND on the basis of mutual agreement and consultations. Further, U-LAND may second technical and other consultants into APIC and/or APC with the view to increasing service, productivity and efficiency, identifying and implementing profit-service opportunities, developing technical capability and resources, and installing adequate safety systems and procedures. In addition, U-LAND shall arrange for the lease by APC of at least three (3) aircrafts owned by U-LAND under such terms as the parties shall mutually agree upon. It is the intent of the parties that U-LAND shall have primary control and responsibility for APC's international operations.

[26]

III. Entering into and funding a joint development agreement

Wellex and U-Land also agreed to enter into a joint development agreement simultaneous with the execution of the share purchase agreement. The joint development agreement shall cover housing and other real estate development projects.[27]

U-Land agreed to remit the sum of US\$3 million not later than May 22, 1998. This sum was to serve as initial funding for the development projects that Wellex and U-Land were to undertake pursuant to the joint development agreement. In exchange for the US\$3 million, Wellex would deliver stock certificates covering 57,000,000 PEC shares to U-Land.[28]

The execution of a joint development agreement was also conditioned on the execution of a share purchase agreement.[29]

Section 4 of the First Memorandum of Agreement reads:

4. Joint Development Agreement with PEC. - Simultaneous with the execution of the SHPA, U-LAND and PEC shall execute a joint development agreement ("JDA") to pursue property development projects in the Philippines. The JDA shall cover specific housing and other real estate development projects as the parties shall agree. All profits derived from the projects covered by the JDA shall be shared equally between U-LAND and PEC. U-LAND shall, not later than May 22, 1998, remit the sum of US\$3.0 million as initial funding for the aforesaid development projects against delivery by WELLEX of 57,000,000 shares of PEC as security for said amount in accordance with Section 9 below.

[30]

In case of conflict between the provisions of the First Memorandum of Agreement

and the provisions of the share purchase agreement or its implementing agreements, the terms of the First Memorandum of Agreement would prevail, unless the parties specifically stated otherwise or the context of any agreement between the parties would reveal a different intent.^[31] Thus, in Section 6 of the First Memorandum of Agreement:

6. Primacy of Agreement. – It is agreed that in case of conflict between the provisions of this Agreement and those of the SHPA and the implementing agreements of the SHPA, the provisions of this Agreement shall prevail, unless the parties specifically state otherwise, or the context clearly reveal a contrary intent.^[32]

Finally, Wellex and U-Land agreed that if they were unable to agree on the terms of the share purchase agreement and the joint development agreement within 40 days from signing, then the First Memorandum of Agreement would cease to be effective.
^[33]

In case no agreements were executed, the parties would be released from their respective undertakings, except that Wellex would be required to refund within three (3) days the US\$3 million given as initial funding by U-Land for the development projects. If Wellex was unable to refund the US\$3 million to U-Land, U-Land would have the right to recover on the 57,000,000 PEC shares that would be delivered to it.^[34] Section 9 of the First Memorandum of Agreement reads:

9. Validity. - In the event the parties are unable to agree on the terms of the SHPA and/or the JDA within forty (40) days from date hereof (or such period as the parties shall mutually agree), this Memorandum of Agreement shall cease to be effective and the parties released from their respective undertakings herein, except that WELLEX shall refund the US\$3.0 million provided under Section 4 within three (3) days therefrom, otherwise U-LAND shall have the right to recover on the 57,000,000 PEC shares delivered to U-LAND under Section 4.^[35]

The First Memorandum of Agreement was signed by Wellex Chairman and President William T. Gatchalian (Mr. Gatchalian) and U-Land Chairman Ker Gee Wang (Mr. Wang) on May 16, 1998.^[36]

Annex "A" or the Second Memorandum of Agreement

Attached and made an integral part of the First Memorandum of Agreement was Annex "A," as stated in the second preambular clause. It is a document denoted as a "Memorandum of Agreement" entered into by Wellex, APIC, and APC.^[37]

The Second Memorandum of Agreement states:

This Memorandum of Agreement, made and executed this ____th day of _____ at Makati City, by and between: