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# SECOND DIVISION

# [ G.R. No. 185592, June 15, 2015 ]

## GEORGE C. FONG, PETITIONER, VS. JOSE V. DUEÑAS, RESPONDENT.

## DECISION

**BRION, J.:**

We resolve in this petition for review on *certiorari*[1] the challenge to the September 16, 2008 decision[2] and the December 8, 2008 resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 88396.

These assailed CA rulings annulled the June 27, 2006 decision[4] and October 30, 2006 order[5] of the Regional Trial Court of Makati, Branch 64 (*trial court*), which directed respondent Jose V. Dueñas (*Dueñas*) to pay Five Million Pesos (*P5 Million*) to petitioner George C. Fong (*Fong*), and imposed a six percent (6%) annual interest on this amount.

### Factual Antecedents

Dueñas is engaged in the bakery, food manufacturing, and retailing business, which are all operated under his two companies, D.C. DANTON, Inc. (*Danton*) and Bakcom Food Industries, Inc. (*Bakcom*). He was an old acquaintance of Fong as they were former schoolmates at the De La Salle University.[6]

Sometime in November 1996, Dueñas and Fong entered into a **verbal** joint venture contract where they agreed to engage in the food business and to incorporate a holding company under the name Alliance Holdings, Inc. (*Alliance or the proposed corporation*). Its capitalization would be Sixty Five Million Pesos (*P65 Million*), to which they would contribute in equal parts.[7]

The parties agreed that Fong would contribute Thirty Two Million and Five Hundred Thousand Pesos (P32.5 Million) in cash while Dueñas would contribute all his Danton and Bakcom shares which he valued at P32.5 Million.[8] Fong required Dueñas to submit the financial documents supporting the valuation of these shares.

On November 25, 1996, Fong started remitting in tranches his share in the proposed corporation's capital. He made the remittances under the impression that his contribution would be applied as his subscription to fifty percent (50%) of Alliance's total shareholdings. On the other hand, Dueñas started processing the Boboli[9] international license that they would use in their food business. Fong's cash contributions are summarized below.[10]

| Date | Amount |
|---|---|
| November 25, 1996 | P1,980,475.20 |
| January 14, 1997 | P1,000,000.00 |
| February 8, 1997 | P500,000.00 |
| March 7, 1997 | P100,000.00 |
| | |

| | |
|---|---|
| April 28, 1997 | P500,000.00 |
| June 13, 1997 | P919,524.80 |
| **Total** | P5,000,000.00 |

**On June 13, 1997, Fong sent a letter to Dueñas informing him of his decision to limit his total contribution from P32.5 Million to P5 Million.** This letter reads:

> June 13, 1997
>
> Mr. Jose Dueñas
> c/o Camira Industries
>
> Re: Proposed JV in Bakcom, D.C. Danton and Boboli
>
> Dear Jojit,
>
> Enclosed is our check for P919,534.80 representing our **additional advances to subject company in process of incorporation**. This will make our total advances to date amounting to P5 million.
>
> Since we agreed in principal late last year to pursue subject matter, the delays in implementing the joint venture have caused us to rethink our position. First, we were faced with the 'personal' factor which was explained to you one time. This has caused us to turn down a number of business opportunities. Secondly, since last year, the operation of Century 21 has been taking more time from us than anticipated. That is why we decided to relinquish our original plan to manage and operate 'Boboli' knowing this limitation. For us, it does not make sense anymore to go for a significant shareholding when we cannot be hands on and participate actively as originally planned. For your information, we will probably be giving up our subway franchise too.
>
> Together with our business advisers and legal counsel, **we came to a decision to hold our commitment (from advances to investment) at P5 million only for now from the original plan of P32.5 million, if this is acceptable to you**.
>
> We know that our decision will somewhat upset the overall plans. But it will probably be more problematic for us in the long run if we continue full speed. **We have put our money down in trust and good faith despite the much delayed financials.** We continue to believe in your game plan and capabilities to achieve the desired goals for subject undertaking. Please permit us instead to be just a modest silent investor now with a take out plan when time and price is right.
>
> Thank you for your kind understanding and consideration.
>
> With best regards.
>
> (Signed) George Fong[11]

Fong observed that despite his P5 Million contribution, **Dueñas still failed to give him the financial documents on the valuation of the Danton and Bakcom shares**. Thus, except for Dueñas' representations, Fong had nothing to rely on to ensure that these shares were really valued at P32.5 Million. **Moreover, Dueñas failed to incorporate and register Alliance with the Securities and Exchange Commission**

**(*SEC*).**[12]

These circumstances convinced Fong that Dueñas would no longer honor his obligations in their joint venture agreement.[13] Thus, on October 30, 1997, Fong wrote Dueñas informing him of his decision to cancel the joint venture agreement. He also asked for the refund of the P5 Million that he advanced.[14] **In response, Dueñas admitted that he could not immediately return the money since he used it to defray the business expenses of Danton and Bakcom.**[15]

To meet Fong's demand, Dueñas proposed several schemes for payment of the P5 Million.[16] However, Fong did not accept any of these proposed schemes. On March 25, 1998, Fong wrote a final letter of demand[17] informing Dueñas that he would file a judicial action against him should he still fail to pay after receipt of this written demand.

Since Dueñas did not pay, Fong filed a complaint against him for collection of a sum of money and damages[18] on April 24, 1998.

## The Trial Court's Ruling

In its June 27, 2006 decision, the trial court ruled in favor of Fong and held that a careful examination of the complaint shows that although it was labeled as an action for collection of a sum of money, it was actually an action for rescission.[19]

The trial court noted that Dueñas' failure to furnish Fong with the financial documents on the valuation of the Danton and Bakcom shares, as well as the almost one year delay in the incorporation of Alliance, caused Fong to rescind the joint venture agreement.[20] According to the trial court, these are adequate and acceptable reasons for rescission.

The trial court also held that Dueñas erroneously invested Fong's cash contributions in his two companies, Danton and Bakcom. The signed receipts,[21] presented as evidence, expressly provided that **each remittance should be applied as advance subscription to Fong's shareholding in Alliance**. Thus, Dueñas' investment of the money in Danton and Bakcom was clearly unauthorized and contrary to the parties' agreement.

Since Dueñas was unjustly enriched by Fong's advance capital contributions, the trial court ordered him to return the money amounting to P5 Million and to pay ten percent (10%) of this amount in attorney's fees, as well as the cost of the suit.[22]

Fong filed a partial motion for reconsideration from the trial court's June 27, 2006 decision and asked for the imposition of a six percent (6%) annual interest, computed from the date of extrajudicial demand until full payment of the award. The trial court granted this prayer in its October 30, 2006 order.[23]

## The CA's Ruling

Dueñas responded to the trial court's ruling through an appeal with the CA, which granted the appeal and annulled the trial court's ruling.

The CA ruled that Fong's June 13, 1997 letter evidenced his intention to convert his cash contributions from "advances" to the proposed corporation's shares, to mere "investments." Thus, contrary to the trial court's ruling, Dueñas correctly invested Fong's P5 Million contribution to Bakcom and Danton. This did not deviate from the parties'

original agreement as eventually, the shares of these two companies would form part of Alliance's capital.[24]

Lastly, the CA held that the June 13, 1997 letter showed that Fong knew all along that he could not immediately ask for the return of his P5 Million investment. Thus, whether the action filed was a complaint for collection of a sum of money, or rescission, it must still fail.[25]

## The Petition

Fong submits that the CA erred when it ruled that his June 13, 1997 letter showed his intent to convert his contributions from advance subscriptions to Alliance's shares, to investments in Dueñas' two companies. Contrary to the CA's findings, the receipts and the letter expressly mentioned that his contributions should all be treated as his share subscription to Alliance.[26]

Also, Fong argues that Dueñas' unjustified retention of the P5 Million and its appropriation to his (Dueñas') own business, amounted to unjust enrichment; and that he contributed to fund Alliance's capital and incorporation, not to pay for Danton and Bakcom's business expenses.[27]

## The Case for Dueñas

Dueñas contends that he could no longer refund the P5 Million since he had already applied it to his two companies; that this is proper since Danton and Bakcom's shares would also form part of his capital contribution to Alliance.[28]

Moreover, the incorporation did not push through because Fong unilaterally rescinded the joint venture agreement by limiting his investment from P32.5 Million to P5 Million.[29] Thus, it was Fong who first breached the contract, not he. Consequently, Fong's failure to comply with his undertaking disqualified him from seeking the agreement's rescission.[30]

## The Court's Ruling

We resolve to **GRANT** the petition.

At the outset, the Court notes that the parties' joint venture agreement to incorporate a company that would hold the shares of Danton and Bakcom and that would serve as the business vehicle for their food enterprise, is a valid agreement. The failure to reduce the agreement to writing does not affect its validity or enforceability as there is no law or regulation which provides that an agreement to incorporate must be in writing.

With this as premise, we now address the related issues raised by the parties.

***The body rather than the title of the complaint determines the nature of the action.***

A well-settled rule in procedural law is that the allegations in the body of the pleading or the complaint, and not its title, determine the nature of an action.[31]

An examination of Fong's complaint shows that **although it was labeled as an action for a sum of money and damages, it was actually a complaint for rescission**. The following allegations in the complaint support this finding:

> 9. **Notwithstanding the aforesaid remittances, defendant failed for an unreasonable length of time to submit a valuation of the equipment of D.C. Danton and Bakcom** x x x.
>
> 10. Worse, despite repeated reminders from plaintiff, **defendant failed to accomplish the organization and incorporation of the proposed holding company**, contrary to his representation to promptly do so.
>
> x x x x
>
> 17. **Considering that the incorporation of the proposed holding company failed to materialize, despite the lapse of one year and four months from the time of subscription, plaintiff has the right to revoke his pre-incorporation subscription. Such revocation entitles plaintiff to a refund of the amount of P5,000,000.00 he remitted to defendant**, representing advances made in favor of defendant to be considered as payment on plaintiff's subscription to the proposed holding company upon its incorporation, plus interest from receipt by defendant of said amount until fully paid. [Emphasis supplied.]

**Fong's allegations primarily pertained to his cancellation of their verbal agreement because Dueñas failed to perform his obligations to provide verifiable documents on the valuation of the Danton's and Bakcom's shares, and to incorporate the proposed corporation.** These allegations clearly show that what Fong sought was the joint venture agreement's rescission.

As a contractual remedy, rescission is available when one of the parties substantially fails to do what he has obligated himself to perform.[32] It aims to address the breach of faith and the violation of reciprocity between two parties in a contract.[33] Under Article 1191 of the Civil Code, the right of rescission is inherent in reciprocal obligations, *viz*:

> The power to rescind obligations is **implied in reciprocal ones**, in case one of the obligors should not comply with what is incumbent upon him. [Emphasis supplied.]

Dueñas submits that Fong's prayer for the return of his cash contribution supports his claim that Fong's complaint is an action for collection of a sum of money. However, Dueñas failed to appreciate that **the ultimate effect of rescission is to restore the parties to their original status before they entered in a contract**. As the Court ruled in *Unlad Resources v. Dragon*:[34]

> Rescission has the effect of "unmaking a contract, or its *undoing from the beginning, and not merely its termination*." **Hence, rescission creates the obligation to return the object of the contract.** It can be carried out only when the one who demands rescission can return whatever he may be obliged to restore. To rescind is to declare a contract void at its inception and to put an end to it as though it never was. It is not merely to terminate it and release the parties from further obligations to each other, but to abrogate it from the beginning and restore the parties to their relative positions as if no contract has been made.
>
> Accordingly, **when a decree for rescission is handed down, it is the duty of the court to require both parties to surrender that which they have respectively received and to place each other as far as practicable in his original situation**.[35] [Emphasis supplied.]