

FIRST DIVISION

[G.R. No. 184036, October 13, 2010]

PACIFIC REHOUSE CORPORATION, PACIFIC CONCORDE CORPORATION, MIZPAH HOLDINGS, INC., FORUM HOLDINGS CORPORATION, AND EAST ASIA OIL COMPANY, INC., PETITIONERS, VS. EIB SECURITIES, INC., RESPONDENT.

D E C I S I O N

VELASCO JR., J.:

The Case

Via this Petition for Review on Certiorari under Rule 45, petitioners seek reversal of the Decision^[1] dated April 11, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 87713 which revoked the October 18, 2005 Resolution,^[2] a judgment on the pleadings, of the Regional Trial Court (RTC), Branch 66 in Makati City, in Civil Case No. 05-178 entitled *Pacific Rehouse Corporation, Pacific Concorde Corporation, Mizpah Holdings, Inc., et al. v. EIB Securities, Inc.*, and remanded the case for further proceedings. Also assailed is the CA Resolution^[3] dated August 5, 2008 denying petitioners' motion for reconsideration.

Petitioners' initiatory pleading in Civil Case No. 05-178 reveals the following averments:

COMMON ALLEGATIONS FOR ALL CAUSES OF ACTION

1. On various dates during the period June 2003 to March 2004, plaintiffs bought 60,790,000 Kuok Properties, Inc. ("KPP") shares of stock through the Philippine Stock Exchange ("PSE"). The KPP shares were acquired by plaintiffs through their broker, defendant EIB.
2. The KPP shares of stock were bought by plaintiffs at an average price of P0.22 per share.
3. Also on various dates in July and August 2003, plaintiffs bought/acquired 32,180,000 DMCI shares of stock through the PSE. Of these shares, 16,180,000 were likewise acquired by the plaintiffs through their broker, defendant EIB, while the remaining 16,000,000 DMCI shares were transferred from Westlink Global Equities, Inc.
4. The DMCI shares of stock were bought by plaintiffs at an average price of P0.38 per share.
5. On 01 April 2004, plaintiffs and defendant EIB agreed to sell the

60,790,000 KPP shares of plaintiffs to any party for the price of P0.14 per share. Attached as Annexes "A" to "A-6" are copies of the notices of sales sent by defendant EIB to the plaintiffs, which bear the conformity of plaintiffs' representative.

6. As agreed by plaintiffs and defendant, the sale of the KPP shares of plaintiffs was made with an option on the part of the plaintiffs to buy back or reacquire the said KPP shares within a period of thirty (30) days from the transaction date, at the buy-back price of P0.18 per share (See Annexes "A" to "A-6").

7. When the last day of the 30-day buy back period for the KPP shares came, plaintiff were undecided on whether or not to exercise their option to reacquire said shares. Thus, plaintiffs and defendant EIB agreed that plaintiffs would have an extended period of until 03 June 2004 to exercise their option to buy back/reacquire the KPP shares that had been sold.

8. Eventually, plaintiffs decided not to exercise their option to buy back the KPP shares and did not give any buy-back instruction/s to their broker, defendant EIB.

9. On various dates in June 2004, without plaintiffs' prior knowledge and consent, defendant EIB sold plaintiffs 32,180,000 DMCI shares of stock for an average price of P0.24 per share. Defendant EIB sold the DMCI shares of plaintiffs for an average price of only P0.24 per share despite full knowledge by defendant EIB that the sale would result in a substantial loss to the plaintiffs of around P4.5 Million since plaintiffs acquired the DMCI shares at P0.38 per share. (cf. Article 1888, Civil Code). Attached Annexes "B" to "B-7" are the Sell Confirmation slips issued by defendant EIB showing the unauthorized sale of plaintiffs' 32,180,000 DMCI shares.

9.1 The proceeds of said DMCI shares sold by defendant EIB without plaintiffs' knowledge and consent were used by defendant EIB to buy back 61,100,000 KPP shares earlier sold by plaintiffs on 01 April 2004. Attached as Annexes "C" to "C-5" are the Buy Confirmation slips issued by defendant showing the unauthorized "buy back" of KPP shares.

9.2 Defendant EIB sold without authority plaintiffs' 32,180,000 DMCI shares and used the proceeds thereof to buy back 61,000,000 KPP shares because defendant EIB made an unauthorized promise and commitment to the buyer/s of plaintiffs' KPP shares in April 2004 that plaintiffs would buy back the KPP shares.

9.3 Plaintiffs learned of the unauthorized sale of their 32,180,000 DMCI shares and the unauthorized "buy back" of 61,000,000 KPP shares only much later. Upon further inquiry, plaintiffs also learned that all throughout their business

dealings, defendant EIB had surreptitiously charged and collected from plaintiffs exorbitant interest amounting to thirty percent (30%) of all amounts owing from the plaintiffs.

10. On 05 January 2005, plaintiffs wrote to defendant EIB to demand that their 32,180,000 DMCI shares be transferred to Westlink Global Equities Inc. ("Westlink"). Copies of the demand letters, all dated 05 January 2005, are attached as Annex "D" to "D-4" respectively.

11. Since the 32,180,000 DMCI shares belonging to plaintiffs had already been sold by defendant EIB without plaintiffs' prior knowledge and consent as early as June 2004, defendant EIB could not comply with the demand of plaintiffs as stated in their demand letters dated 05 January 2005.

12. In his letters to the plaintiffs dated 12 January 2005, defendant EIB admitted having sold the 32,180,000 DMCI shares of stock of plaintiffs without the latter's prior knowledge and consent. Copies of defendant EIB's letters to plaintiffs, all dated 12 January 2005, are attached as Annexes "E" to "E-4", respectively.

12.1 Defendant EIB states in its aforesaid letters that it sent statements of account to plaintiffs in July 2004. Defendant EIB claims, albeit erroneously, that since plaintiffs made no exceptions to the statements of account, the sale of plaintiffs' DMCI shares in June 2004 [was] supposedly "validly executed".

13. Hence, this Complaint.

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SECOND CAUSE OF ACTION

17. Plaintiffs replead all of the foregoing allegations.

18. The sale by defendant EIB of the 32,180,000 DMCI shares of plaintiffs was done with malice and fraudulent intent. As such, defendant should be directed to pay plaintiffs the amount of at least PhP3,000,000.00 as moral damages.^[4]

In response, respondent EIB Securities, Inc. (EIB) submitted its Answer which contained the following averments:

ADMISSIONS AND DENIALS:

1. Defendant admits the allegations contained in paragraphs under the heading The Parties. Likewise, defendant admits the allegations

contained in paragraph 1.

2. Paragraph 2 of the Complaint is specifically denied, the truth of the matter is that the KPP shares of stock were bought by plaintiffs at an average price of only 18 centavos per share.

3. Paragraph 3 is admitted, qualified, however, that the remaining 16,000,000 DMCI shares of plaintiffs were transferred by Westlink Global Equities, Inc. and other brokerages firms to the defendant primarily to serve as a collateral in the cash account obligations of the plaintiffs to the defendant.

4. Paragraph 4 of the Complaint is specifically denied, the truth of the matter being the DMCI shares of stock were bought by the plaintiffs at an approximate average price of only 25 centavos per share.

5. Defendant admits paragraph 5 of the Complaint insofar as the allegation that plaintiffs and defendant agreed to sell the 60,790,000 KPP share of plaintiffs to any party for the price of 14 centavos per share, qualified, however, by the presence of a provision "Full Cross to Seller" meaning that the Sellers (who are the plaintiffs) have the obligation to buy back or reacquire the shares from the buyers.

6. Defendant specifically denies paragraph 6 of the Complaint, the truth of the matter and as evidenced by the same Notices of Sale (Annex"A" to "A-6" of the Complaint), plaintiffs have no option to buy back or reacquire the said KPP shares, the nature or kind of transaction agreement is Full Cross to seller which is an obligation and not merely an option on the part of the plaintiffs to buy back or reacquire the said KPP shares sold to buyers.

7. Defendant specifically and vehemently denies the allegations of paragraphs 7 and 8 of the Complaint. The truth of the matter is that there was no extension agreed upon by the parties for the plaintiffs to exercise option to buy back/reacquire the Kuok Properties, Inc. shares of stocks (KKP). The Contracts for the sale of KPP shares of stocks as already stated above and as clearly shown from the same Annexes "A" to "A-6" of the Complaint was an obligation that there was no extension period given to the plaintiffs.

8. Defendant also specifically and vehemently denies the allegations of paragraphs 9 of the Complaint and its sub-paragraphs. The truth of the matter being that under the trading rules, honoring one's obligation is a sacred commitment of stocks and market traders. Considering that in the sale of the KPP shares there is an **obligation** as certified by the word Full Cross to Seller, the KPP shares of stocks that were sold to buyers have to be bought back 30 days from the transaction date at the Buy Back Amount of 18 centavos per share and that plaintiffs and defendant have to honor the said buy back obligation. Considering, however, that plaintiffs were not delivering funds to the defendant in order to honor the said buy back obligation, not to mention the Cash account obligations of the plaintiffs to the defendant amounting to more or less 70 Million

Pesos, defendant had no more recourse but to buy back the KPP shares from the buyers by selling the DMCI shares of the plaintiffs under the defendant's possession, and thus, enforcing the provisions of the Securities Dealing Accounts Agreements that was signed by the plaintiffs in favor of the defendant, a copy of which is hereto attached and made an integral part hereof as Annex "1". Section 7 of the aforesaid Securities Dealing Accounts Agreements states:

"7. Lien

The client agrees that all monies and/or securities and/or all other property of the Client (plaintiffs) in the Company's (defendant) custody or control held from time to time shall be subject to a general lien in favour of Company for the discharge of all or any indebtedness of the Client to the Company. The Client shall not be entitled to withdraw any monies or securities held by the Company pending the payment in full to the Company of any indebtedness of the Client to the Company. **The company shall be entitled at any time and without notice to the Client to retain, apply, sell or dispose of all or any of the [client's] property if any such obligation or liability is not discharged in full by the client when due or on demand in or towards the payment and discharge of such obligation or liability and the Company shall be under no duty to the client as to the price obtained or any losses or liabilities incurred or arising in respect of any such sale or disposal.** Subject to the relevant law and regulation on the matter, the client hereby authorizes the Company, on his/its behalf, at any time and without notice to the client's property if any such obligation or liability is not discharged." [Emphasis in the original.]

[Defendant] specifically denies the allegation of the plaintiffs that defendant sold the DMCI shares of plaintiffs for an average price of only 24 centavos for the truth of the matter being the average price those DMCI shares were sold was P0.2565 centavos per share and likewise, that price was the controlling market price of DMCI share at the time of the transaction. Defendant likewise, specifically denies the allegation that defendant surreptitiously charged and collected an interest of 30% from the plaintiff for the truth of the matter is that what defendant did not charge such interest.

Moreover, and contrary to the allegations of the Complaint, plaintiffs are fully aware and knowledgeable of the sale of their DMCI shares as early as June 2004 and that the proceeds thereof were not even enough to fully pay the buy back obligation of the plaintiffs to the buyers of KPP shares of stocks.

Plaintiffs, in order to feign ignorance of the sale of their DMCI shares had