

THIRD DIVISION

[G.R. No. 149241, August 24, 2009]

**DART PHILIPPINES, INC., PETITIONER, VS. SPOUSES
FRANCISCO AND ERLINDA CALOGCOG, RESPONDENTS.**

DECISION

NACHURA, J.:

Petitioner assails in this Rule 45 petition the February 28, 2001 Decision^[1] and the July 30, 2001 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. CV. No. 52474. The facts and proceedings that led to the filing of the instant petition are pertinently narrated below.

Engaged in the business of manufacturing or importing into the Philippines Tupperware products and marketing the same under a direct selling distribution system,^[3] petitioner entered into a Distributorship Agreement with respondents on March 3, 1986.^[4] The agreement was to expire on March 31, 1987 but was subject to an automatic renewal clause for two one-year terms.^[5] On April 1, 1991, the parties again executed another Distributorship Agreement^[6] which was to expire on March 31, 1992 but renewable on a yearly basis upon terms and conditions mutually agreed upon in writing by the parties.^[7]

Following the expiration of the agreement, petitioner, on April 30, 1992, informed respondents that, due to the latter's several violations thereof, it would no longer renew the same.^[8] Respondents then made a handwritten promise for them to observe and comply with the terms and conditions thereof.^[9] This convinced petitioner to extend, on July 24, 1992, the period of the distributorship up to September 30, 1992.^[10]

In the meantime, on July 2, 1992, petitioner subjected respondents' account to an audit review.^[11] In September 1992, petitioner informed respondents that it had engaged the services of an auditing firm and that it was again subjecting respondents' account to an audit review.^[12] Objecting to the second audit,^[13] respondents disallowed the auditing firm from inspecting their books and records. As a result, petitioner only accepted respondents' purchase orders on pre-paid basis.^[14]

On September 29, 1992, a day before the expiry of the Distributorship Agreement, respondents filed before the Regional Trial Court (RTC) of Pasig City a Complaint for damages with application for a writ of injunction and/or restraining order docketed as Civil Case No. 62444.^[15] They alleged that petitioner abused its right when it caused the audit of their account and when it only honored their orders if they were pre-paid, thereby causing damages to them of around P1.3M.^[16]

On November 12, 1992, the trial court issued a writ of preliminary injunction and directed petitioner to observe the terms and conditions of the Distributorship Agreement and to honor, deliver and fulfill its obligations in effecting deliveries of Tupperware products to respondents.^[17] In the subsequent *certiorari* proceedings before the appellate court docketed as CA-G.R. SP No. 29560, the CA ruled that the Distributorship Agreement already expired; thus, the trial court committed grave abuse of discretion in granting the writ of preliminary injunction which had the effect of enforcing a contract that had long expired.^[18]

Respondents then moved before the trial court, on June 14, 1993, for the admission of their Supplemental Complaint,^[19] in which they alleged that petitioner refused to award benefits to the members of respondents' sales force and coerced the said members to transfer to another distributor; that petitioner refused to comply with Sections 8 and 9^[20] of the Distributorship Agreement by not paying respondents the value of the products on hand and in their custody, and by not effecting the transfer of their good will to the absorbing distributor; and that petitioner, by its actions which resulted in the loss of respondents' sales force, had made inutile respondents' investment in their building. Respondents thus prayed for additional actual damages, specifically P4,495,000.00 for the good will, P1M for the products on hand, and P3M for the cost of the building.

Expectedly, petitioner opposed the admission of the supplemental complaint.^[21] Amid the protestations of petitioner, the trial court admitted the supplemental complaint^[22] and ordered the former to file its supplemental answer.^[23]

After trial on the merits, the RTC rendered its Decision^[24] on November 27, 1995. It ruled, among others, that the second audit was unreasonable and was only made to harass respondents; that the shift from credit to pre-paid basis in the purchase orders of respondents was another act of harassment; that petitioner had no valid reason to refuse the renewal of the distributorship agreement; and that petitioner abused its rights under the said agreement. It then concluded that because of petitioner's unjustified acts, respondents suffered damages, among which were the salaries paid to the internal auditors during the first audit, the good will money, the value of the warehouse, moral and exemplary damages, and attorney's fees. The dispositive portion of the RTC decision reads:

WHEREFORE, judgment is hereby rendered dismissing for lack of merit [respondents'] claims for payment of items subject of credit memoranda, and for products alleged to be on hand at the termination of the [distributorship] agreement. On [respondents'] other claims, judgment is hereby rendered, as follows:

1. Ordering the [petitioner] to pay [respondents] the amount of P23,500.17 representing the salaries of internal auditors engaged by the [petitioner] to conduct an audit on [respondents'] financial records;

2. Ordering the [petitioner] to pay [respondents] the sum of P4,495,000.00 representing "goodwill" money which [respondents] failed to realize;
3. Ordering the [petitioner] to pay [respondents] the sum of P1,000,000.00 as reasonable compensation to the [respondents] for acquiring a lot and constructing thereon a structure to serve as storage, assembly place and warehouse for [petitioner's] products;
4. Ordering the [petitioner] to pay [respondents] the sum of P500,000.00 as moral damages and another P500,000.00 as and by way of exemplary damages; and
5. Ordering the [petitioner] to pay [respondents] the sum of P100,000.00 as attorney's fees, plus P2,000.00 per Court appearance.

[Petitioner's] counterclaims are hereby dismissed for lack of merit.

Costs against the [petitioner].

SO ORDERED.^[25]

Aggrieved, petitioner timely interposed its appeal. In the assailed February 28, 2001 Decision,^[26] the appellate court affirmed with modification the ruling of the trial court and disposed of the appeal as follows:

WHEREFORE, in view of the foregoing, the assailed decision of the court *a quo* is hereby AFFIRMED WITH MODIFICATION, the award for moral damages is hereby REDUCED to P100,000.00 and the award for exemplary damages is hereby REDUCED to P50,000.00. The award of P1,000,000.00 as reasonable compensation for the acquisition of the lot and construction of the building is hereby DELETED.

SO ORDERED.^[27]

Since its motion for reconsideration was subsequently denied by the appellate court in the further assailed July 30, 2001 Resolution,^[28] petitioner instituted the instant petition for review on *certiorari*, raising the following grounds:

1. The Court of Appeals committed an error in affirming the decision of the trial court admitting the supplemental complaint thereby taking cognizance of the issues raised and rendering judgment thereon.
2. The Court of Appeals committed an error in affirming the decision of the trial court holding petitioner liable to pay respondents the

"goodwill money" they allegedly failed to realize.

3. While petitioner lauds the Court of Appeals' decision deleting the trial court's award of P1,000,000.00 by way of compensation for the alleged acquisition of the lot and construction of the building, and appreciates the reduction of the trial court's awards on the alleged moral damages and exemplary damages, the Court of Appeals still erred in not totally dismissing respondents' claims for damages including attorney's fees.
4. The Court of Appeals committed an error in not finding for the petitioner and in not awarding damages in favor of petitioner by way of reasonable attorney's fees.^[29]

The primordial issue to be resolved by the Court in the instant case is whether petitioner abused its rights under the distributorship agreement when it conducted an audit of respondents' account, when it accepted respondents' purchase orders only if they were on a pre-paid basis, and when it refused to renew the said distributorship agreement.

Preliminarily, the Court admits that, ordinarily, it will not review the findings of fact made by the appellate court. However, jurisprudence lays down several exceptions, among which are the following which obtain in this case: when the judgment is based on a misapprehension of facts and when the appellate court manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, could justify a different conclusion.^[30] Thus, the Court finds it imperative to evaluate, as in fact it had reviewed, the records of the case, including the evidence adduced during the trial, in relation to the arguments of the parties and the applicable law and jurisprudence.

Under Article 19 of the Civil Code, every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith. To find the existence of abuse of right under the said article, the following elements must be present: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another.^[31] Accordingly, the exercise of a right shall always be in accordance with the purpose for which it has been established, and must not be excessive or unduly harsh--there must be no intention to injure another.^[32] A person will be protected only when he acts in the legitimate exercise of his right, that is, when he acts with prudence and in good faith, not when he acts with negligence or abuse.^[33]

Malice or bad faith is at the core of Article 19 of the Civil Code. Good faith refers to the state of mind which is manifested by the acts of the individual concerned. It consists of the intention to abstain from taking an unconscionable and unscrupulous advantage of another. It is presumed. Thus, he who alleges bad faith has the duty to prove the same.^[34] Bad faith does not simply connote bad judgment or simple negligence; it involves a dishonest purpose or some moral obloquy and conscious doing of a wrong, a breach of known duty due to some motives or interest or ill will that partakes of the nature of fraud. Malice connotes ill will or spite and speaks not

in response to duty. It implies an intention to do ulterior and unjustifiable harm. Malice is bad faith or bad motive.^[35]

At the crux of this controversy, therefore, is whether petitioner acted in bad faith or intended to injure respondents when it caused the auditing of the latter's account, when it implemented the pre-paid basis in treating the latter's orders, and when it refused to renew the distributorship agreement.

The Court rules in the negative. We note that in the written correspondence of petitioner to respondents on April 30, 1992 informing the latter of the non-renewal of the distributorship agreement, petitioner already pointed out respondents' violations of the agreement. The letter pertinently reads:

We found that you have committed the following acts which are contrary to provisions of Section 2(f) of our Agreement:

(a) You submitted several "Vanguard Reports" containing false statements of the sales performance of your units. A comparison of the reports you submitted to our office with that actually reported by your managers show that the sales of your units are actually much lower than that reported to Tupperware (Exhibits "G," "H," "I," "J," "L," "O," "P," "Q," and "R.")

(b) The unauthorized alteration of the mechanics of "Nan's Challenge," which is a Tupperware company sponsored promotion campaign. The documentary evidence furnished us, Exhibit "E," shows that the amount of target party averages were increased by you.

(c) Charging the managers for accounts of their dealers and for overdue kits (Exhibits "C" and "D").^[36]

The correspondence prompted respondents to make a handwritten promise that they would observe and comply with the terms and conditions of the distributorship agreement.^[37] This promise notwithstanding, petitioner was not barred from exercising its right in the agreement to conduct an audit review of respondents' account. Thus, an audit was made in July 1992. In September 1992, petitioner informed respondents that it was causing the conduct of a second audit review. And as explained in petitioner's September 11, 1992 correspondence to respondents, the second audit was intended to cover the period not subject of the initial audit (the period prior to January 1 to June 30, 1992, and the period from July 1, 1992 to September 1992).^[38] Because respondents objected to the second audit, petitioner exercised its option under the agreement to vary the manner in which orders are processed--this time, instead of the usual credit arrangement, petitioner only admitted respondents' purchase orders on pre-paid basis. It may be noted that petitioner still processed respondents' orders and that the pre-paid basis was only implemented during the last month of the agreement, in September 1992. With the expiry of the distributorship agreement on September 30, 1992, petitioner no longer acceded to a renewal of the same.

From these facts, we find that bad faith cannot be attributed to the acts of