545 Phil. 702

SECOND DIVISION

[G.R. NO. 163512, February 28, 2007]

DAISY B. TIU, PETITIONER, VS. PLATINUM PLANS PHIL., INC., RESPONDENT.

DECISION

QUISUMBING, J.:

For review on certiorari are the Decision[1] dated January 20, 2004 of the Court of Appeals in CA-G.R. CV No. 74972, and its Resolution[2] dated May 4, 2004 denying reconsideration. The Court of Appeals had affirmed the decision[3] dated February 28, 2002 of the Regional Trial Court (RTC) of Pasig City, Branch 261, in an action for damages, ordering petitioner to pay respondent P100,000 as liquidated damages.

The relevant facts are as follows:

Respondent Platinum Plans Philippines, Inc. is a domestic corporation engaged in the pre-need industry. From 1987 to 1989, petitioner Daisy B. Tiu was its Division Marketing Director.

On January 1, 1993, respondent re-hired petitioner as Senior Assistant Vice-President and Territorial Operations Head in charge of its Hongkong and Asean operations. The parties executed a contract of employment valid for five years.[4]

On September 16, 1995, petitioner stopped reporting for work. In November 1995, she became the Vice-President for Sales of Professional Pension Plans, Inc., a corporation engaged also in the pre-need industry.

Consequently, respondent sued petitioner for damages before the RTC of Pasig City, Branch 261. Respondent alleged, among others, that petitioner's employment with Professional Pension Plans, Inc. violated the non-involvement clause in her contract of employment, to wit:

> 8. NON INVOLVEMENT PROVISION - The EMPLOYEE further undertakes that during his/her engagement with EMPLOYER and in case of separation from the Company, whether voluntary or for cause, he/she shall not, for the next TWO (2) years thereafter, engage in or be involved with any corporation, association or entity, whether directly or indirectly, engaged in the same business or belonging to the same pre-need industry as the EMPLOYER. Any breach of the foregoing provision shall render the EMPLOYEE liable to the EMPLOYER in the amount of One Hundred Thousand Pesos (P100,000.00) for and as liquidated damages.[5]

Respondent thus prayed for P100,000 as compensatory damages; P200,000 as moral damages; P100,000 as exemplary damages; and 25% of the total amount

due plus P1,000 per counsel's court appearance, as attorney's fees.

Petitioner countered that the non-involvement clause was unenforceable for being against public order or public policy: *First*, the restraint imposed was much greater than what was necessary to afford respondent a fair and reasonable protection. Petitioner contended that the transfer to a rival company was an accepted practice in the pre-need industry. Since the products sold by the companies were more or less the same, there was nothing peculiar or unique to protect. *Second*, respondent did not invest in petitioner's training or improvement. At the time petitioner was recruited, she already possessed the knowledge and expertise required in the pre-need industry and respondent benefited tremendously from it. *Third*, a strict application of the non-involvement clause would amount to a deprivation of petitioner's right to engage in the only work she knew.

In upholding the validity of the non-involvement clause, the trial court ruled that a contract in restraint of trade is valid provided that there is a limitation upon either time or place. In the case of the pre-need industry, the trial court found the two-year restriction to be valid and reasonable. The dispositive portion of the decision reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter to pay the following:
>
> 1. the amount of One Hundred Thousand Pesos (P100,000.00) for and as damages, for the breach of the non-involvement provision (Item No. 8) of the contract of employment;
> 2. costs of suit.
>
> There being no sufficient evidence presented to sustain the grant of attorney's fees, the Court deems it proper not to award any.
>
> SO ORDERED.[6]

On appeal, the Court of Appeals affirmed the trial court's ruling. It reasoned that petitioner entered into the contract on her own will and volition. Thus, she bound herself to fulfill not only what was expressly stipulated in the contract, but also all its consequences that were not against good faith, usage, and law. The appellate court also ruled that the stipulation prohibiting non-employment for two years was valid and enforceable considering the nature of respondent's business.

Petitioner moved for reconsideration but was denied. Hence, this appeal by certiorari where petitioner alleges that the Court of Appeals erred when:

> A.
>
> ... [IT SUSTAINED] THE VALIDITY OF THE NON-INVOLVEMENT CLAUSE IN PETITIONER'S CONTRACT CONSIDERING THAT THE PERIOD FIXED THEREIN IS VOID FOR BEING OFFENSIVE TO PUBLIC POLICY
>
> B.
>
> ... [IT SUSTAINED] THE AWARD OF LIQUIDATED DAMAGES

CONSIDERING THAT IT BEING IN THE NATURE OF A PENALTY THE SAME IS EXCESSIVE, INIQUITOUS OR UNCONSCIONABLE[7]

Plainly stated, the core issue is whether the non-involvement clause is valid.

Petitioner avers that the non-involvement clause is offensive to public policy since the restraint imposed is much greater than what is necessary to afford respondent a fair and reasonable protection. She adds that since the products sold in the pre-need industry are more or less the same, the transfer to a rival company is acceptable. Petitioner also points out that respondent did not invest in her training or improvement. At the time she joined respondent, she already had the knowledge and expertise required in the pre-need industry. Finally, petitioner argues that a strict application of the non-involvement clause would deprive her of the right to engage in the only work she knows.

Respondent counters that the validity of a non-involvement clause has been sustained by the Supreme Court in a long line of cases. It contends that the inclusion of the two-year non-involvement clause in petitioner's contract of employment was reasonable and needed since her job gave her access to the company's confidential marketing strategies. Respondent adds that the non-involvement clause merely enjoined her from engaging in pre-need business akin to respondent's within two years from petitioner's separation from respondent. She had not been prohibited from marketing other service plans.

As early as 1916, we already had the occasion to discuss the validity of a non-involvement clause. In *Ferrazzini v. Gsell*,[8] we said that such clause was unreasonable restraint of trade and therefore against public policy. In *Ferrazzini,* the employee was prohibited from engaging in any business or occupation in the Philippines for a period of five years after the termination of his employment contract and must first get the written permission of his employer if he were to do so. The Court ruled that while the stipulation was indeed limited as to time and space, it was not limited as to trade. Such prohibition, in effect, forces an employee to leave the Philippines to work should his employer refuse to give a written permission.

In *G. Martini, Ltd. v. Glaiserman*,[9] we also declared a similar stipulation as void for being an unreasonable restraint of trade. There, the employee was prohibited from engaging in any business similar to that of his employer for a period of one year. Since the employee was employed only in connection with the purchase and export of abaca, among the many businesses of the employer, the Court considered the restraint too broad since it effectively prevented the employee from working in any other business similar to his employer even if his employment was limited only to one of its multifarious business activities.

However, in *Del Castillo v. Richmond*,[10] we upheld a similar stipulation as legal, reasonable, and not contrary to public policy. In the said case, the employee was restricted from opening, owning or having any connection with any other drugstore within a radius of four miles from the employer's place of business during the time the employer was operating his drugstore. We said that a contract in restraint of trade is valid provided there is a limitation upon either time or place and the restraint upon one party is not greater than the protection the other party requires.