523 Phil. 293

SECOND DIVISION

[G.R. NO. 150780, May 05, 2006]

NESTLE PHILIPPINES, INC., PETITIONER, VS. FY SONS, INCORPORATED, RESPONDENT.

D E C I S I O N

CORONA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 57299 dated January 11, 2001 which in turn affirmed with modification the decision of Branch 57 of the Regional Trial Court (RTC) of Makati City in Civil Case No. 90-3169,[2] as well as the CA's resolution[3] dated November 14, 2001 which denied petitioner's motion for reconsideration.

The antecedent facts follow.

Petitioner is a corporation engaged in the manufacture and distribution of all Nestle products nationwide. Respondent, on the other hand, is a corporation engaged in trading, marketing, selling and distributing food items to restaurants and food service outlets. On December 23, 1998, petitioner and respondent entered into a distributorship agreement (agreement) whereby petitioner would supply its products for respondent to distribute to its food service outlets. A deed of assignment was also executed by respondent in favor of petitioner on December 13, 1988, assigning the time deposit of a certain Calixto Laureano in the amount of P500,000 to secure respondent's credit purchases from petitioner. A special power of attorney was likewise executed by Laureano authorizing the respondent to use the time deposit as collateral.

The areas covered by the agreement were Baguio, Dagupan, Angeles, Bulacan, Pampanga, Urdaneta, La Union, Tarlac and Olongapo. At the end of 1989, the agreement expired and the parties executed a renewal agreement on January 22, 1990. A supplemental agreement was executed on June 27, 1990, to take effect on July 1, 1990.

On July 2, 1990, petitioner fined respondent P20,000 for allegedly selling 50 cases of Krem-Top liquid coffee creamer to Lu Hing Market, a retail outlet in Tarlac. This was purportedly proscribed by the agreement. Respondent paid the fine. In September 1990, Krem-Top liquid coffee creamer was sold to Augustus Bakery and Grocery, an act again allegedly in violation of the agreement. Petitioner imposed a P40,000 fine which respondent refused to pay.

On October 19, 1990, respondent, through counsel, wrote petitioner to complain about the latter's breaches of their agreement and the various acts of bad faith committed by petitioner against respondent. Respondent demanded the payment of

damages. In turn, on November 5, 1990, petitioner sent respondent a demand letter and notice of termination, alleging that the latter had outstanding accounts of P995,319.81. When the alleged accounts were not settled, petitioner applied the P500,000 time deposit as partial payment.

Respondent filed a complaint for damages against petitioner, alleging bad faith.[4] According to respondent:

> " [petitioner] made representations and promises of rendering support, including marketing support, assignment of representatives by way of assistance in its development efforts, and assurances of income in a marketing area not previously developed. Thus, [respondent] was lured into executing a distributorship agreement with the [petitioner]". [Respondent] thereby invested huge sums of money, time and efforts to abide by such distributorship agreement, and to develop market areas for [petitioner's] products. Thereafter, the [petitioner] breached the distributorship agreement by committing various acts of bad faith such as: failing to provide promotional support; deliberately failing to promptly supply the [respondent] with the stocks for its orders; intentionally diminishing the [respondent's] sales by supporting a non-distributor; and concocting falsified charges to cause the termination of the distributorship agreement without just cause. By such termination, [petitioner] would be able to obtain the market gains made by [respondent] at the latter's own efforts and expenses. When [respondent] complained to [petitioner] about the latter's acts of bad faith, the latter terminated the agreement on the allegation that [respondent] did not pay its accounts. [Petitioner] also seized [respondent's] time deposit collateral without basis; penalized [respondent] with monetary penalty for the concocted charge; and unilaterally suspended the supply of stocks to [respondent].[5]

Respondent sought actual damages of P1,000,000, moral damages of P200,000, exemplary damages of P100,000, attorney's fees of P100,000, plus the return of the P500,000 time deposit and costs of suit. In its answer, petitioner interposed a counterclaim for P495,319.81 representing the balance of respondent's overdue accounts, with interest of 2% per month from the date of default until fully paid, moral damages of P100,000, exemplary damages of P200,000, attorney's fees of P120,000 and costs of suit.

In a decision dated November 10, 1997, the Makati City RTC ruled in favor of the respondent:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the defendant to pay plaintiff the following:
>
> 1. The amount of P1,000,000.00 as actual damages sustained by the plaintiff by reason of the unwarranted and illegal acts of the defendant in terminating the distributorship agreement;
>
> 2. The amount of P100,000.00 as exemplary damages;
>
> 3. The amount of P100,000.00 as attorney's fees;

> The plaintiff however, is hereby ordered to pay the defendant the amount of P53,214,26 (sic) which amount has been established as the amount the defendant is entitled from the plaintiff.
>
> Three-fourths costs against the defendant.
>
> SO ORDERED.[6]

Petitioner appealed the decision to the CA. On January 11, 2001, the CA rendered a decision affirming the RTC's decision with modification:

> WHEREFORE, the judgment appealed from is AFFIRMED with the following MODIFICATIONS: (1) the actual damages is INCREASED from P1,000,000.00 to P1,500,000.00;[7] and (2) the amount of P53,214.26 payable by the appellee to the appellant is DELETED.
>
> SO ORDERED.[8]

Both the CA and the RTC found, among others, that petitioner indeed failed to provide support to respondent, its distributor; that petitioner unjustifiably refused to deliver stocks to respondent; that the imposition of the P20,000 fine was void for having no basis; that petitioner failed to prove respondent's alleged outstanding obligation; that petitioner terminated the agreement without sufficient basis in law or equity and in bad faith; and that petitioner should be held liable for damages.

Hence this petition raising the following grounds:

(1)

> THE [CA] COMMITTED A GRAVE ERROR IN LAW WHEN IT RULED THAT: "THE RATIOCINATIONS OF THE APPELLANT AS TO THE APPELLEE'S ALLEGED VIOLATION OF THE CONTRACT ARE THUS WEAK AND UNCONVINCING" AND "THE APPELLEE'S ALLEGED NON-PAYMENT AND OUTSTANDING BALANCE OF P995,319.81 WAS NOT SUFFICIENTLY PROVEN" DESPITE THE FACT THAT FLORENTINO YUE, JR., THE MANAGER OF THE RESPONDENT ADMITTED IN OPEN COURT IN ANSWER TO THE QUESTION OF THEN PRESIDING JUDGE PHINNY C. ARAQUIL THAT THE DISTRIBUTORSHIP AGREEMENT WAS TERMINATED BY YOUR PETITIONER BECAUSE OF THE UNPAID BALANCE OF THE RESPONDENT OF AROUND P900,000.00.

(2)

> THE [CA] COMMITTED A GRAVE ERROR IN LAW IN DISREGARDING THE TESTIMONY OF THE WITNESS FOR THE PETITIONER, CRISTINA RAYOS WHO PREPARED THE STATEMENT OF ACCOUNT (EXHIBIT 11) ON THE GROUNDS THAT SHE WAS NOT INVOLVED IN THE DELIVERY AS SHE WAS ONLY IN CHARGE OF THE RECORDS AND DOCUMENTS OF ALL ACCOUNTS RECEIVABLES AS PART OF HER DUTIES AS CREDIT AND COLLECTION MANAGER CONSIDERING THAT THE EVIDENCE PRESENTED WAS AN EXCEPTION TO THE HEARSAY RULE UNDER SECTION 45 (SIC),

RULE 130, OF THE REVISED RULES ON EVIDENCE.

(3)

THE [CA] COMMITTED A GRAVE ERROR IN LAW IN AWARDING TO THE RESPONDENT ACTUAL DAMAGES IN THE AMOUNT OF P1,000,000.00 AND ORDERING THE REFUND OF THE AMOUNT OF P500,000.00 REPRESENTING THE TIME DEPOSIT OF THE RESPONDENT WHICH WAS ASSIGNED AS SECURITY FOR THE RESPONDENT'S CREDIT LINE BECAUSE THE PETITIONER HAD THE RIGHT TO TERMINATE THE DISTRIBUTORSHIP AGREEMENT UNDER ART. 1191 OF THE CIVIL CODE AND PARAGRAPHS 5 AND 22 OF THE DISTRIBUTORSHIP AGREEMENT BECAUSE OF THE FAILURE OF THE RESPONDENT TO SETTLE ITS ACCOUNT IN THE AMOUNT OF P995,319.81 AND THAT THE EVIDENCE SUBMITTED BY THE RESPONDENT ON THE ALLEGED ACTUAL DAMAGES IT SUSTAINED AS A RESULT OF THE TERMINATION OF THE DISTRIBUTORSHIP AGREEMENT (EXHIBIT 5) AND COMPANION EXHIBITS WERE MERELY SPECULATIVE AND DID NOT HAVE PROBATIVE VALUE.

(4)

THE [CA] COMMITTED A GRAVE ERROR IN LAW FOR NOT AWARDING TO THE PETITIONER ITS COUNTERCLAIM.[9]

On the first issue, petitioner asserts that respondent's witness, Florentino Yue, Jr., a director and officer of respondent corporation, admitted in open court that the respondent had an unpaid obligation to petitioner in the amount of "around P900,000."[10]

Respondent counters that this statement was merely in answer to the question of the presiding judge on what ground petitioner *supposedly* terminated the agreement. The witness was not being asked, nor was he addressing, the truth of such ground. In fact, this witness later testified that "(petitioner) wrote us back saying that they (had) terminated my contract and that I owe(d) them something like P900,000."[11]

Petitioner's argument is palpably without merit and deserves scant consideration. It quoted Mr. Yue's statement in isolation from the rest of his testimony and took it out of context. Obviously, Yue's statement cannot be considered a judicial admission that respondent had an unpaid obligation of P900,000 and that the agreement had been terminated for this reason.

On the second issue, petitioner argues that the CA should not have disregarded the testimony of petitioner's witness, Cristina Rayos, who prepared the statement of account on the basis of the invoices and delivery orders corresponding to the alleged overdue accounts of respondent.[12] The CA ruled that petitioner was not able to prove that respondent indeed had unpaid accounts, saying, among others, that the testimony of Rayos constituted incompetent evidence:

xxx the appellee's alleged non-payment and outstanding balance of P995,319.81 was not sufficiently proven.