

## THIRD DIVISION

[ G.R. NO. 132864, October 24, 2005 ]

**PHILIPPINE FREE PRESS, INC., PETITIONER, VS. COURT OF APPEALS (12TH DIVISION) AND LIWAYWAY PUBLISHING, INC., RESPONDENTS.**

### DECISION

**GARCIA, J.:**

In this petition for review on certiorari under Rule 45 of the Rules of Court, petitioner Philippine Free Press, Inc. seeks the reversal of the Decision<sup>[1]</sup> dated February 25, 1998 of the Court of Appeals (CA) in *CA-GR CV No. 52660*, affirming, with modification, an earlier decision of the Regional Trial Court at Makati, Branch 146, in an action for annulment of deeds of sale thereat instituted by petitioner against the Presidential Commission for Good Government (PCGG) and the herein private respondent, Liwayway Publishing, Inc.

As found by the appellate court in the decision under review, the facts are:

xxx [Petitioner] . . . is a domestic corporation engaged in the publication of Philippine Free Press Magazine, one of the . . . widely circulated political magazines in the Philippines. Due to its wide circulation, the publication of the Free Press magazine enabled [petitioner] to attain considerable prestige prior to the declaration of Martial Law as well as to achieve a high profit margin. . . .

Sometime in . . . 1963, [petitioner] purchased a parcel of land situated at No. 2249, Pasong Tamo Street, Makati which had an area of 5,000 square meters as evidenced by . . . (TCT) No. 109767 issued by the Register of Deeds of Makati (Exh. Z). Upon taking possession of the subject land, [petitioner] constructed an office building thereon to house its various machineries, equipment, office furniture and fixture. [Petitioner] thereafter made the subject building its main office . . . .

During the 1965 presidential elections, [petitioner] supported the late President Diosdado Macapagal against then Senate President Ferdinand Marcos. Upon the election of the late President Ferdinand Marcos in 1965 and prior to the imposition of Martial law on September 21, 1972, [petitioner] printed numerous articles highly critical of the Marcos administration, exposing the corruption and abuses of the regime. The [petitioner] likewise ran a series of articles exposing the plan of the Marcoses to impose a dictatorship in the guise of Martial Law . . . .

In the evening of September 20, 1972, soldiers surrounded the Free Press Building, forced out its employees at gunpoint and padlocked the said establishment. The soldier in charge of the military contingent then

informed Teodoro Locsin, Jr., the son of Teodoro Locsin, Sr., the President of [petitioner], that Martial Law had been declared and that they were instructed by the late President Marcos to take over the building and to close the printing press. xxx.

On September 21, 1972 . . . , Teodoro Locsin, Sr. was arrested [and] . . . was brought to Camp Crame and was subsequently transferred to the maximum security bloc at Fort Bonifacio.

Sometime in December, 1972, Locsin, Sr. was informed . . . that no charges were to be filed against him and that he was to be provisionally released subject to the following conditions, to wit: (1) he remained (sic) under "city arrest"; xxx (5) he was not to publish the *Philippine Free Press* nor was he to do, say or write anything critical of the Marcos administration . . . .

Consequently, the publication of the *Philippine Free Press* ceased. The subject building remained padlocked and under heavy military guard (TSB, 27 May 1993, pp. 51-52; stipulated). The cessation of the publication of the ... magazine led to the financial ruin of [petitioner] . . . . [Petitioner's] situation was further aggravated when its employees demanded the payment of separation pay as a result of the cessation of its operations. [Petitioner's] minority stockholders, furthermore, made demands that Locsin, Sr. buy out their shares. xxx.

On separate occasions in 1973, Locsin, Sr. was approached by the late Atty. Crispin Baizas with offers from then President Marcos for the acquisition of the [petitioner]. However, Locsin, Sr. refused the offer stating that [petitioner] was not for sale (TSN, 2 May 1988, pp. 8-9, 40; 27 May 1993, pp. 66-67).

A few months later, the late Secretary Guillermo De Vega approached Locsin, Sr. reiterating Marcos's offer to purchase the name and the assets of the [petitioner].xxx

Sometime during the middle of 1973, Locsin, Sr. was contacted by Brig. Gen. Hans Menzi, the former *aide-de-camp* of then President Marcos concerning the sale of the [petitioner]. Locsin, Sr. requested that the meeting be held inside the [petitioner] Building and this was arranged by Menzi (TSN, 27 May 1993, pp. 69-70). During the said meeting, Menzi once more reiterated Marcos's offer to purchase both the name and the assets of [petitioner] adding that "Marcos cannot be denied" (TSN, 27 May 1993, p. 71). Locsin, Sr. refused but Menzi insisted that he had no choice but to sell. Locsin, Sr. then made a counteroffer that he will sell the land, the building and all the machineries and equipment therein but he will be allowed to keep the name of the [petitioner]. Menzi promised to clear the matter with then President Marcos (TSN, 27 May 1993, p. 72). Menzi thereafter contacted Locsin, Sr. and informed him that President Marcos was amenable to his counteroffer and is offering the purchase price of Five Million Seven Hundred Fifty Thousand (P5, 750,000.00) Pesos for the land, the building, the machineries, the office furnishing and the fixtures of the [petitioner] on a "take-it-or-leave-it"

basis (TSN, 2 May 1988, pp.42-43; 27 May 1993, p. 88).

On August 22, 1973, Menzi tendered to Locsin, Sr. a check for One Million (P1, 000,000.00) Pesos downpayment for the sale, . . . Locsin, Sr. accepted the check, subject to the condition that he will refund the same in case the sale will not push through. (Exh. 7).

On August 23, 1973, the Board of Directors of [petitioner] held a meeting and reluctantly passed a resolution authorizing Locsin, Sr. to sell the assets of the [petitioner] to Menzi minus the name "Philippine Free Press (Exhs. A-1 and 1; TSN, 27 May 1993, pp. 73-76).

On October 23, 1973, the parties [petitioner, as vendor and private respondent, represented by B/Gen. Menzi, as vendee] met . . . and executed two (2) notarized Deeds of Sale covering the land, building and the machineries of the [petitioner]. Menzi paid the balance of the purchase price in the amount of . . . (P4,750,000.00) Pesos (Exhs. A and ; B and 10; TSN, 27 May 1993, pp. 81-82; 3 June 1993, p. 89).

Locsin, Sr. thereafter used the proceeds of the sale to pay the separation pay of [petitioner's] employees, buy out the shares of the minority stockholders as well as to settle all its obligations.

On February 26, 1987, [petitioner] filed a complaint for Annulment of Sale against [respondent] Liwayway and the PCGG before the Regional Trial Court of Makati, Branch 146 on the grounds of vitiated consent and gross inadequacy of purchase price. On motion of defendant PCGG, the complaint against it was dismissed on October 22, 1987. (Words in bracket and underscoring added)

In a decision dated October 31, 1995,<sup>[2]</sup> the trial court dismissed petitioner's complaint and granted private respondent's counterclaim, to wit:

WHEREFORE, in view of all the foregoing premises, the herein complaint for annulment of sales is hereby dismissed for lack of merit.

On [respondent] counterclaim, the court finds for [respondent] and against [petitioner] for the recovery of attorney's fees already paid for at P1,945,395.98, plus a further P316,405.00 remaining due and payable.

SO ORDERED. (Words in bracket added)

In time, petitioner appealed to the Court of Appeals (CA) whereat its appellate recourse was docketed as *CA-G.R. C.V. No. 52660*.

As stated at the outset hereof, the appellate court, in a decision dated February 25, 1998, affirmed with modification the appealed decision of the trial court, the modification consisting of the deletion of the award of attorney's fees to private respondent, thus:

WHEREFORE, with the sole modification that the award of attorney's fees in favor of [respondent] be deleted, the Decision appealed from is hereby **AFFIRMED** in all respects.

SO ORDERED.

Hence, petitioner's present recourse, urging the setting aside of the decision under review which, to petitioner, decided questions of substance in a way not in accord with law and applicable jurisprudence considering that the appellate court gravely erred:

I

xxx IN ITS MISAPPLICATION OF THE DECISIONS OF THE HONORABLE COURT THAT RESULTED IN ITS ERRONEOUS CONCLUSION THAT PETITIONER'S CAUSE OF ACTION HAD ALREADY PRESCRIBED.

II

xxx IN CONCLUDING THAT THE UNDISPUTED FACTS AND CIRCUMSTANCES PRECEDING THE EXECUTION OF THE CONTRACTS OF SALE FOR THE PETITIONER'S PROPERTIES DID NOT ESTABLISH THE FORCE, INTIMIDATION, DURESS AND UNDUE INFLUENCE WHICH VITIATED PETITIONER'S CONSENT.

A. xxx IN CONSIDERING AS HEARSAY THE TESTIMONIAL EVIDENCE WHICH CLEARLY ESTABLISHED THE THREATS MADE UPON PETITIONER AND THAT RESPONDENT LIWAYWAY WILL BE USED AS THE CORPORATE VEHICLE FOR THE FORCED ACQUISITION OF PETITIONER'S PROPERTIES.

B. xxx IN CONCLUDING THAT THE ACTS OF THEN PRESIDENT MARCOS DURING MARTIAL LAW DID NOT CONSTITUTE THE FORCE, INTIMIDATION, DURESS AND UNDUE INFLUENCE WHICH VITIATED PETITIONER'S CONSENT.

C. xxx IN RESOLVING THE INSTANT CASE ON THE BASIS OF MERE SURMISES AND SPECULATIONS INSTEAD OF THE UNDISPUTED EVIDENCE ON RECORD.

III

xxx IN CONCLUDING THAT THE GROSSLY INADEQUATE PURCHASE PRICE FOR PETITIONER'S PROPERTIES DOES NOT INDICATE THE VITIATION OF PETITIONER'S CONSENT TO THE CONTRACTS OF SALE.

IV

xxx IN CONCLUDING THAT PETITIONER'S USE OF THE PROCEEDS OF THE SALE FOR ITS SURVIVAL CONSTITUTE AN IMPLIED RATIFICATION [OF] THE CONTRACTS OF SALE.

V

xxx IN EXCLUDING PETITIONER'S EXHIBITS "X-6" TO "X-7" AND "Y-3" (PROFFER) WHICH ARE ADMISSIBLE EVIDENCE WHICH COMPETENTLY

PROVE THAT THEN PRESIDENT MARCOS OWNED PRIVATE RESPONDENT LIWAYWAY, WHICH WAS USED AS THE CORPORATE VEHICLE FOR THE ACQUISITION OF PETITIONER'S PROPERTIES.

The petition lacks merit.

Petitioner starts off with its quest for the allowance of the instant recourse on the submission that the martial law regime tolled the prescriptive period under Article 1391 of the Civil Code, which pertinently reads:

Article 391. The action for annulment shall be brought within four years.

This period shall begin:

In cases of intimidation, violence or undue influence, from the time the defect of the consent ceases.

xxx xxx xxx

It may be recalled that the separate deeds of sale<sup>[3]</sup> sought to be annulled under petitioner's basic complaint were both executed on October 23, 1973. Per the appellate court, citing *Development Bank of the Philippines [DBP] vs. Pundogar*<sup>[4]</sup>, the 4-year prescriptive period for the annulment of the aforesaid deeds ended "in late 1977", doubtless suggesting that petitioner's right to seek such annulment accrued four (4) years earlier, a starting time-point corresponding, more or less, to the date of the conveying deed, *i.e.*, October 23, 1973. Petitioner contends, however, that the 4-year prescriptive period could not have commenced to run on October 23, 1973, martial law being then in full swing. Plodding on, petitioner avers that the continuing threats on the life of Mr. Teodoro Locsin, Sr. and his family and other menacing effects of martial law - which should be considered as *force majeure* - ceased only after the February 25, 1986 People Power uprising.

Petitioner instituted its complaint for annulment of contracts on February 26, 1987. The question that now comes to the fore is: Did the 4-year prescriptive period start to run in late October 1973, as postulated in the decision subject of review, or on February 25, 1986, as petitioner argues, on the theory that martial law has the effects of a *force majeure*<sup>[5]</sup>, which, in turn, works to suspend the running of the prescriptive period for the main case filed with the trial court.

Petitioner presently faults the Court of Appeals for its misapplication of the doctrinal rule laid down in *DBP vs. Pundogar*<sup>[6]</sup> where this Court, citing and quoting excerpts from the ruling in *Tan vs. Court of Appeals* <sup>[7]</sup>, as reiterated in *National Development Company vs. Court of Appeals*, <sup>[8]</sup> wrote -

We can not accept the petitioners' contention that the period during which authoritarian rule was in force had interrupted prescription and that the same began to run only on February 25, 1986, when the Aquino government took power. It is true that under Article 1154 [of the Civil Code] xxx fortuitous events have the effect of tolling the period of prescription. *However, we can not say, as a universal rule, that the period from September 21, 1972 through February 25, 1986 involves a force majeure. Plainly, we can not box in the "dictatorial" period within*