

## THIRD DIVISION

[ G.R. No. 148332, September 30, 2003 ]

**NATIONAL DEVELOPMENT COMPANY, PETITIONER, VS.  
MADRIGAL WAN HAI LINES CORPORATION, RESPONDENT.**

### D E C I S I O N

**SANDOVAL-GUTIERREZ, J.:**

Before us is a petition for review on certiorari<sup>[1]</sup> assailing the Decision of the Court of Appeals dated May 21, 2001 in CA-G.R. CV No. 66026, affirming with modification the Decision dated August 6, 1999 of the Regional Trial Court, Branch 62, Makati City, in Civil Case No. 96-558 for sum of money and damages.

The factual antecedents are:

The National Development Company, petitioner, is a government-owned and controlled corporation created and existing under Commonwealth Act No. 182, as amended by Presidential Decree No. 1648. The National Shipping Corporation of the Philippines (**NSCP**) is a wholly-owned **subsidiary** of petitioner offering shipping services for containerized cargo between the Far East ports and the U.S. West Coast.<sup>[2]</sup>

On March 1, 1993, petitioner's Board of Directors approved the privatization plan of the NSCP.<sup>[3]</sup> In May 1993, the Board offered for sale to the public its one hundred percent (100%) stock ownership in NSCP worth P150,000.00, as well as its three (3) ocean-going vessels (*M/V National Honor*, *M/V National Pride* and *M/V National Dignity*).<sup>[4]</sup>

Consequently, petitioner released to the public an **Information Package**<sup>[5]</sup> containing NSCP's background, assets, operational and financial status. Attached thereto is NSCP's Financial Statements covering the period from December 1990 up to 1992.

The Information Package likewise contained the **Negotiated Sale Guidelines** which **embodied the terms and conditions of the proposed sale**. Attached thereto is a **Proposal Letter Form**<sup>[6]</sup> wherein bidders were advised to submit their bids to be specified in the same form. Petitioner's desired price for the NSCP shares of stock and the vessels was Twenty-Six Million Seven Hundred Fifty Thousand US Dollars (\$26,750,000.00).<sup>[7]</sup>

During the public bidding on May 7, 1993, the lone bidder was herein respondent, Madrigal Wan Hai Lines Corporation, a domestic private corporation duly organized and existing under the Philippine laws with principal office in Manila. Mr. Willie J. Uy, respondent's Consultant, submitted a bid of \$15 million through the Proposal Letter

Form.<sup>[8]</sup>

The respondent's bid was rejected by petitioner and the Commission on Audit.

But since there was no other bidder, petitioner entered into a negotiated sale with respondent.<sup>[9]</sup> After several negotiations, respondent increased its offer to \$18.5 million which was accepted by petitioner. The negotiated sale was then approved by petitioner's Board of Directors on August 26, 1993, the President of the Philippines on September 28, 1993, the Committee on Privatization on October 7, 1993, and the Commission on Audit on February 2, 1994.<sup>[10]</sup>

Accordingly, on February 11, 1994, petitioner issued a Notice of Award to respondent of the sale of the NSCP shares and vessels for \$18.5 million.<sup>[11]</sup> **On March 14, 1994, petitioner and respondent executed the corresponding Contract of Sale,<sup>[12]</sup> and the latter acquired NSCP, its assets, personnel, records and its three (3) vessels.<sup>[13]</sup>**

**On September 22, 1994, respondent was surprised to receive from the US Department of Treasury, Internal Revenue Service (US IRS), a Notice of Final Assessment against NSCP for deficiency taxes on gross transportation income derived from US sources for the years ending 1990, 1991 and 1992.**

<sup>[14]</sup> The tax assessment was based on Section 887 of the US Internal Revenue Code imposing a 4% tax on gross transportation income of any foreign corporation derived from US sources.<sup>[15]</sup>

Anxious that the delay in the payment of the deficiency taxes may hamper its shipping operations overseas, **respondent, on October 14, 1994, assumed and paid petitioner's tax liabilities, including the tax due for the year 1993, in the total amount of \$671,653.00. These taxes were incurred prior to respondent's take-over of NSCP's management.<sup>[16]</sup> Respondent likewise paid the additional amount of \$16,533.10 as penalty for late payment.<sup>[17]</sup>**

Eventually, respondent demanded from petitioner reimbursement for the amounts it paid to the US IRS. But petitioner refused despite repeated demands. Hence, on March 20, 1996, respondent filed with the Regional Trial Court (RTC), Branch 62, Makati City a complaint<sup>[18]</sup> against petitioner for reimbursement and damages, docketed as Civil Case No. 96-558.

On August 6, 1999, the RTC rendered a Decision<sup>[19]</sup> in favor of respondent and against petitioner. The trial court found, among others, that even before the sale, petitioner knew that NSCP had tax liabilities with the US IRS, yet it did not inform respondent about it. The dispositive portion of the RTC Decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered as follows:

(1) defendant (now petitioner) to pay plaintiff (now respondent), to wit:

- a. US \$671,653, US \$14,415.87, and US \$2,117.23 or their peso equivalent at the time of payment;
- b. 6% interest of the above-mentioned amounts per annum from the time of the filing of the complaint until the same shall have been fully paid;
- c. P100,000.00 as exemplary damages;
- d. P100,000.00 as attorney's fees;

(2) The Counterclaims of the defendant dated August 20, 1996 is DISMISSED."<sup>[20]</sup>

Upon appeal, the Court of Appeals rendered a Decision<sup>[21]</sup> on May 21, 2001 affirming the trial court's judgment with modification, thus:

"WHEREFORE, upon the premises, the Decision appealed from is **AFFIRMED** with the **MODIFICATION** that the award of exemplary damages is **DELETED** and the award of attorney's fees is **REDUCED** to P20,000.00.

"SO ORDERED."<sup>[22]</sup>

The Court of Appeals held:

"We concur with the trial court in ordering defendant-appellant (now petitioner) to reimburse plaintiff-appellee (now respondent) the deficiency taxes it paid to the US IRS, and quote with favor its well-written ratiocination as follows:

`In its effort to extricate itself from liability, defendant further argues that the sale with the plaintiff was on `CASH, AS-WHERE-IS' basis and that plaintiff, as an offeror, was responsible for informing itself with respect to any and all conditions regarding the NSCP shares and vessels which may in any manner affect the offer price or the nature of offeror's proposal (Exhs. 8, 8-A to A-B).

`The above-mentioned contracts form part of the NSCP's Negotiated Sale Guidelines dated March 1993 prepared by NSCP and required by NDC (now petitioner) to be attached with the Proposal Letter Form, which was also prepared by NSCP, and submitted to NDC by bidders. These contracts are ready-made form of contracts, the preparation of which was left entirely to the NSCP. Their nature is that of a contract of adhesion. A contract of adhesion may be struck down as void and unenforceable, for being subversive of public policy, when the weaker party is imposed upon in dealing with the dominant bargaining party and is reduced to the alternative of taking it or leaving it, completely deprived of the opportunity to bargain on equal footing (*Saludo, Jr. vs. Court of Appeals*, 207 SCRA 498 [1992]). In the case at bar, the acceptance of

the Negotiated Sale Guidelines and submission thereof together with the Proposal Letter Form by a prospective buyer is a required formality of the bidding. Under the circumstance, the plaintiff, in taking such contracts, may not be deemed to have been given the opportunity to bargain on equal footing."<sup>[23]</sup>

Petitioner now comes to us via the instant petition, ascribing to the Court of Appeals the following error:

"THE COURT OF APPEALS ERRED IN CONCURRING WITH THE TRIAL COURT IN ORDERING HEREIN PETITIONER TO REIMBURSE RESPONDENT THE DEFICIENCY TAXES IT PAID TO THE US IRS."<sup>[24]</sup>

Petitioner contends that contrary to the findings of both lower courts, the Negotiated Sale Guidelines and the Proposal Letter Form are mere invitations to bid. As such, they are not contracts and should be treated as mere offer or proposal to prospective buyers of the NSCP shares and marine vessels.<sup>[25]</sup>

Petitioner further stresses that the sale was on an "AS IS, WHERE IS" basis.<sup>[26]</sup> By accepting the terms and conditions of the sale, respondent, in effect, accepted the risk of an "AS IS, WHERE IS" arrangement wherein the latter is charged with caution under the principle of *caveat emptor*.<sup>[27]</sup> Pursuant to the Negotiated Sale Guidelines and the Proposal Letter Form, respondent should have apprised itself of the financial status and liabilities of NSCP and its marine vessels. Therefore, for its predicament, respondent should not fault petitioner.<sup>[28]</sup>

For its part, respondent maintains that the Court of Appeals did not commit any error in its challenged Decision. The Negotiated Sale Guidelines and the Proposal Letter Form constitute a contract of adhesion because the buyer was required to submit its bid through a *pro-forma* proposal letter.<sup>[29]</sup> The offer to bidders was on a "take it, or leave it" basis, leaving no room for argument or negotiation, except as to the price.<sup>[30]</sup> Being a contract of adhesion, it should be strictly construed against the seller, herein petitioner.<sup>[31]</sup>

Respondent also contends that under Articles 19,<sup>[32]</sup> 20<sup>[33]</sup> and 21<sup>[34]</sup> of the Civil Code, petitioner had then the legal duty to disclose its tax liabilities. Records show that respondent repeatedly inquired from petitioner about such matter.<sup>[35]</sup> Instead of telling the truth, petitioner made several assurances that the NSCP was a clean, lien-free going concern and profitable entity.<sup>[36]</sup> In fact, under Section 7.01 of the Negotiated Sale Guidelines, petitioner made a warranty against any lien or encumbrance.<sup>[37]</sup>

In this petition, the issues for our resolution are:

- (1) Whether the Negotiated Sale Guidelines and the Proposal Letter Form constitute a contract of adhesion; and
- (2) Whether petitioner is legally bound to reimburse respondent for

the amounts it paid corresponding to the former's tax liabilities to the US IRS.

On the first issue, we agree with both lower courts that the Negotiated Sale Guidelines and the Proposal Letter Form constitute a contract of adhesion.

A contract of adhesion is one in which one of the parties imposes a ready-made form of contract, which the other party may accept or reject, but which the latter cannot modify. In other words, in such contract, the terms therein are fixed by one party, and the other party has merely "to take it, or leave it."<sup>[38]</sup> Thus, it can be struck down as void and unenforceable for being subversive of public policy, especially when the will of the dominant party is imposed upon the weaker party and the latter is denied the opportunity to bargain on equal footing.<sup>[39]</sup>

It must be stressed, however, that contracts of adhesion are not strictly against the law. In *Ong Yiu vs. Court of Appeals*<sup>[40]</sup> and *Pan American World Airways, Inc. vs. Intermediate Appellate Court*,<sup>[41]</sup> we held that contracts of adhesion – wherein one party imposes a ready-made form of contract on the other – are not entirely prohibited. The other party is free to reject it entirely; if he adheres, he gives his consent.

Nevertheless, the inequality of bargaining positions and the resulting impairment of the other party's freedom to contract necessarily call upon us to exercise our mandate as a court of justice and equity. Indeed, we have ruled that contracts of such nature "obviously call for greater strictness and vigilance on the part of the courts of justice with a view to protecting the weaker party from abuses and imposition and prevent their becoming traps for the unwary."<sup>[42]</sup>

In the case at bar, the Negotiated Sale Guidelines and Proposal Letter Form fit the characteristics of a contract of adhesion. On their very face, these documents show that petitioner NDC had control over the terms and conditions of the sale. The Negotiated Sale Guidelines provides:

#### "4.0 PREPARATION OF OFFERS

4.01 **Offerors shall use the `Proposal Letter Form for Sale of NSCP and Vessels' provided herein.**

4.02 **All offers should be accompanied by: x x x (b) the Negotiated Sale Guidelines duly signed by the offeror or authorized representative in every page thereof x x x.**

x x x

x x x

x

x x

#### 14.0 OTHER PROVISIONS

14.01NDC and APT reserve the right in their discretion to reject any and all offers, **to waive any formality therein and of these guidelines**, and to consider