

SECOND DIVISION

[G.R. No. 226213, September 27, 2017]

G. HOLDINGS, INC., PETITIONER, VS. CAGAYAN ELECTRIC POWER AND LIGHT COMPANY, INC. (CEPALCO) AND FERROCHROME PHILIPPINES, INC., RESPONDENTS.

DECISION

CAGUIOA, J:

This is a petition for review on *certiorari*^[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision^[2] dated April 14, 2016 of the Court of Appeals^[3] (CA) in CA-G.R. CV No. 03366-MIN and the Resolution^[4] dated July 25, 2016 denying the motion for reconsideration filed by petitioner, G. Holdings, Inc. (GHI). The CA Decision denied the appeal and affirmed the Decision^[5] dated July 22, 2013 of the Regional Trial Court of Misamis Oriental, 10th Judicial Region, Branch 38, Cagayan de Oro City (RTC-CDO) in Civil Case No. 2004-111.

Facts and Antecedent Proceedings

From March 1990, Cagayan Electric Power and Light Company, Inc. (CEPALCO), which operates a light and power distribution system in Cagayan de Oro City, supplied power to the ferro-alloy smelting plant of Ferrochrome Philippines, Inc.^[6] (FPI) at the PHIVIDEC Industrial Estate in Tagoloan, Misamis Oriental.^[7] When FPI defaulted in the payment of its electric power bills amounting to P16,301,588.06 as of March 1996, CEPALCO demanded payment thereof.^[8] FPI paid CEPALCO on three separate dates the total amount of P13,161,916.44, leaving a balance of P2,899,859.15.^[9] FPI failed again to pay its subsequent electricity bills, thereby increasing its unpaid electric bills to P29,509,240.89 as of May 1996.^[10] For failure to pay FPI's outstanding bills, CEPALCO disconnected the electric power supply to FPI in May 1996.^[11] After sending a statement of account with P30,147,835.65 unpaid bills plus 2% monthly surcharge, CEPALCO filed a collection suit (Civil Case No. 65789) against FPI in July 1996 before the Regional Trial Court of Pasig City, Branch 264 (RTC-Pasig).^[12]

RTC-Pasig rendered a Decision (Partial Summary Judgment) dated April 22, 1999 in favor of CEPALCO, ordering FPI to pay CEPALCO P25,608,579.98.^[13] On January 19, 2004, RTC-Pasig rendered its Decision^[14] in favor of CEPALCO, affirming the P25,608,579.98 award for basic cost of energy consumed (given in the Partial Summary Judgment), and ordering the payment of P2,364,703.80 for contracted energy or energy differential and surcharges, PHIVIDEC royalty and franchise tax.^[15]

On February 27, 2004, FPI appealed the Decision of the RTC-Pasig to the CA (CA

G.R. CV No. 86228 [CEPALCO collection case]).^[16]

CEPALCO moved for execution pending appeal, which was granted by RTC-Pasig.^[17] The writ of execution was issued on March 30, 2004.^[18] FPI filed before the CA a *certiorari* petition with prayer for temporary restraining order (TRO) and preliminary injunction (CA G.R. SP No. 83224 [CEPALCO execution case]).^[19]

In the meantime, Sheriff Renato B. Baron (Baron) of RTC-Pasig issued notices of levy upon personal and real properties dated April 1 and 2, 2004 and notices of sale on execution of personal and real properties dated April 1, 2004.^[20]

In CA G.R. SP No. 83224 (CEPALCO execution case), the CA issued an initial TRO in its Resolution dated April 6, 2004 and then a writ of preliminary injunction in its Resolution dated June 11, 2004, enjoining the implementation of the Order granting execution pending appeal.^[21]

On April 5, 2004, GHI filed a case (Civil Case No. 2004-111) against Sheriff Baron, CEPALCO and FPI for Nullification of Sheriffs Levy on Execution and Auction Sale, Recovery of Possession of Properties and Damages before the RTC-CDO.^[22] GHI claimed that the levied ferro-alloy smelting facility, properties and equipment are owned by it as evidenced by a Deed of Assignment^[23] dated March 11, 2003 (the Deed of Assignment) executed by FPI in consideration of P50,366,926.71.^[24]

In the unilateral Deed of Assignment, FPI, as the assignor, through its stockholders and Board of Directors' duly authorized representative and Acting President, Juanito E. Figueroa, in consideration of obligations amounting to P50,366,926.71 as of December 31, 2002, inclusive of the interest charges, assigned, transferred, ceded and conveyed **absolutely** in favor of GHI, as the assignee, "**all of the [assignor's] properties, equipment and facilities, located in Phividec Industrial Estate, Tagoloan, Misamis Oriental** and more particularly described in the attached schedules **as Annexes 'I', 'II', 'III', 'IV['] and 'V'.**"^[25]

Prior to the Deed of Assignment, FPI sent to GFII a letter^[26] dated February 28, 2003 wherein the manner by which the obligation of FPI amounting to P50,366,926.71 (as of December 31, 2002) would be addressed per their earlier discussions was confirmed, to wit:

1. The obligation of **FPI to G. Holdings** amounting to **P50,366,926.71 (as of December 31, 2002)** shall be covered by assignment of certain **FPI** assets sufficient to cover the obligations even at today's depressed metal prices.
2. The right to the work process owned by FPI shall be made available to G. Holdings under the following options[:]

Option A

As soon as metal prices and major costs justify, **FPI** shall at its capital and expense operate the plant including the assets transferred to **G. Holdings**. Revenue **shall be shared with G.**

Holdings at the rate of 20% of EBITDA (Earnings Before Interest[,] Taxes, Depreciation and Amortization.)

A minimum of **P10.0 million** annually shall be shared by **G. Holdings**. The [c]ost of maintenance and upkeep of assets shall be covered by **FPI**.

Option B

[G.] Holdings shall be the entity to operate the plant and business with its capital and expense.

As owner of the rights to the work process, **FPI** shall be entitled to a share of **10%** in the **EBITDA** with **a minimum of P7.5 million per year**.

This arrangement shall be for a **minimum of 8 years** after which **G. Holdings** can acquire the rights for an amount equal to **P36.0 M**.

All financial requirements shall be shouldered by **G. Holdings** x x x.

3. The option shall be decided by **G. Holdings** within a **three[-]year period** beyond which the choice shall be made by **FPI** within a **3[-] year period**. The cycle will be repeated if the plant has not operated for six years from assignment.^[27]

The letter bears the conformity of GHI.^[28]

CEPALCO filed its answer with compulsory counterclaim and cross-claim.^[29] In its counterclaim, CEPALCO assailed the validity of the Deed of Assignment executed by FPI in favor of GHI in payment of alleged advances from GHI (sister company of FPI) from 1998 to 2002 amounting to £50,366,926.71, inclusive of interest, as of December 2002. CEPALCO contended that the Deed of Assignment was null and void for being absolutely simulated and, as a *dacion en pago*, it did not bear the conformity of the creditor. GHI and FPI have substantially the same directors. The Deed of Assignment was in fraud of FPFs creditors as it was made after the RTC-Pasig had already rendered a partial judgment in favor of CEPALCO and was, therefore, rescissible.^[30]

In the meantime, the CA rendered its Decision dated August 14, 2008 in CA G.R. CV No. 86228 (CEPALCO collection case) granting FPFs appeal in part and the RTC-Pasig Decision was affirmed but modified by deleting the award of the PHIVIDEC royalty of 1%.^[31] FPI elevated the CA Decision to the Court and was docketed as G.R. No. 185892.^[32] In April 2010, the Court denied FPI's petition in its Resolution dated April 21, 2010 for failure of FPI to sufficiently show that the CA committed any reversible error in the challenged decision and resolution to warrant the Court's discretionary appellate jurisdiction.^[33]

In CA G.R. SP No. 83224 (CEPALCO execution case), the CA dismissed FPI's petition for lack of merit and affirmed the assailed orders of the RTC-Pasig, and FPI's motion

for reconsideration was likewise denied.^[34]

The RTC-CDO Ruling

Going back to the RTC-CDO case (Civil Case No. 2004-111), the origin of the present case, a Decision^[35] dated July 22, 2013 was rendered in favor of CEPALCO and against GHI: (1) rescinding the Deed of Assignment; (2) ordering GHI to pay CEPALCO actual and exemplary damages as well as attorney's fees; and (3) lifting the writ of preliminary injunction.^[36]

The rescission of the Deed of Assignment by the RTC-CDO was anchored on the presence of several badges of fraud, to wit: (a) the consideration of the assignment was P50 million while the value of the assets of FPI amounted to P280 million; (b) the existence of the "Outokumpo" work process of smelting (which was allegedly more valuable than the smelting facility subject of the assignment and without which the smelting facility could not be operated), as well as its value, were not sufficiently established; (c) the assignment of all or substantially all of FPI's assets was made when FPI was suffering financially and after the rendition of the partial judgment in favor of CEPALCO; and (d) GHI did not take exclusive possession of the assets assigned to it.^[37]

The dispositive portion of the RTC-CDO Decision states:

WHEREFORE, judgment is hereby rendered in favor of defendant CEPALCO against G Holdings Inc. as follows:

1. Rescinding the Deed of Assignment dated March 11, 2003 between G Holdings Inc. in favor of Ferrochrome Philippines Inc.;
2. Ordering G [H]oldings Inc. to pay defendant CEPALCO the following:
 - 2.a Actual damages in the amount of Php256,587.48;
 - 2.b Exemplary damages in the amount of Php1,000,000.00; and
 - 2.c Attorney's Fees in the amount of Php500,000.00
3. Lifting the Writ of Preliminary Injunction and finding G. [H]oldings Inc. and Oriental Assurance Corporation liable on the Phpl Million Preliminary Injunction Bond to partially satisfy the foregoing sums.
4. Costs against G Holdings, Inc.

SO ORDERED.^[38]

GHI appealed the RTC-CDO Decision to the CA.^[39] The appeal was docketed as CA-G.R. CV No. 03366-MIN.^[40]

The CA Ruling

In its Decision^[41] dated April 14, 2016, the CA denied the appeal and affirmed the

RTC-CDO Decision. The CA ruled that the RTC-CDO correctly found the existence of fraud or deliberate intent on the part of FPI and GHI to defraud CEPALCO. The agreement between GHI and FPI where GHI was given the option to operate the smelting facility using the alleged "Outokumpo" work process which FPI retained, subject to payment of an agreed amount to FPI as owner of the rights of the work process, was designed to keep the smelting facility intact and insulated against execution in satisfaction of CEPALCO's judgment credit. The CA also ruled that the Deed of Assignment was absolutely simulated and having been executed after the Partial Summary Judgment rendered by the RTC-Pasig, it was done in anticipation of the adverse final outcome of the RTC-Pasig case. Regarding GHI's contention that CEPALCO failed to pay the filing fees, the CA noted that CEPALCO filed its Answer with Compulsory Counterclaim and Cross-claim on April 26, 2004. At that time, the CA reasoned that CEPALCO was not yet liable to pay filing fees. Under Rule 141, Section 7, as amended by A.M. No. 04-2-04-SC, docket fees were required to be paid for compulsory counterclaims and cross-claims effective only on August 16, 2004.^[42]

The dispositive portion of the CA Decision states:

WHEREFORE, the instant appeal is **DENIED**. The Decision dated 22 July 2013 of the Regional Trial Court, 10th Judicial Region, Branch 38, Cagayan de Oro City, in Civil Case No. 2004-111 is hereby **AFFIRMED**.

SO ORDERED.^[43]

GHI filed a motion for reconsideration, which was denied in a Resolution^[44] dated July 25, 2016.

Hence, this Petition. CEPALCO filed its Comment^[45] dated May 12, 2017.

Issues

Whether the CA erred in not dismissing CEPALCO's permissive counterclaim for non-payment of docket fees.

Whether the CA erred in holding that the Deed of Assignment was absolutely simulated.

Whether the CA erred in rescinding the Deed of Assignment absent an independent action for rescission.

Whether the CA erred in holding that the Deed of Assignment was done in fraud of creditors and badges of fraud accompanied its execution.

Whether GHI is entitled to its claims for damages.^[46]

The Court's Ruling

Filing Fees of CEPALCO's Counterclaim

In justifying the non-payment of filing fees on the counterclaim of CEPALCO, the CA ruled: