

FIRST DIVISION

[G.R. No. 175256, August 23, 2012]

**LILY LIM, PETITIONER. VS. KOU CO PING A.K.A. CHARLIE CO,
RESPONDENT.**

[G.R. NO. 179160]

**KOU CO PING A.K.A CHARLIE CO, PETITIONER, VS. LILY LIM,
RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

Is it forum shopping for a private complainant to pursue a civil complaint for specific performance and damages, while appealing the judgment on the civil aspect of a criminal case for estafa?

Before the Court are consolidated Petitions for Review assailing the separate Decisions or the Second and Seventeenth Divisions or the Court of Appeals (CA) on the above issue.

Lily Lim's (Lim) Petition for Review^[1] assails the October 20, 2005 Resolution^[2] of the Second Division in CA-G.R. CV No. 85138, which ruled on the above issue in the affirmative:

Due to the filing of the said civil complaint (Civil Case No. 5112396), Charlie Co filed the instant motion to dismiss [Lily Lim's] appeal, alleging that in filing said civil case, Lily Lim violated the rule against forum shopping as the elements of *litis pendentia* are present.

This Court agrees.^[3]

x x x x

IN VIEW OF THE FOREGOING, the appeal is **DISMISSED**.

SO ORDERED.^[4]

On the other hand, Charlie Co's (Co) Petition for Review^[5] assails the April 10, 2007 Decision^[6] of the Seventeenth Division in CA-G.R. SP No. 93395 for ruling on the same issue in the negative:

We find no grave abuse of discretion committed by respondent judge. The elements of *litis pendentia* and forum-shopping were not met in this case.^[7]

x x x x

WHEREFORE, in view of the foregoing, the instant petition is **DENIED**. This case is **REMANDED** to the court of origin for further proceedings.

SO ORDERED.^[8]

Factual Antecedents

In February 1999, FR Cement Corporation (FRCC), owner/operator of a cement manufacturing plant, issued several withdrawal authorities^[9] for the account of cement dealers and traders, Fil-Cement Center and Tigerbilt. These withdrawal authorities state the number of bags that the dealer/trader paid for and can withdraw from the plant. Each withdrawal authority contained a provision that it is valid for six months from its date of issuance, unless revoked by FRCC Marketing Department.

Fil-Cement Center and Tigerbilt, through their administrative manager, Gail Borja (Borja), sold the withdrawal authorities covering 50,000 bags of cement to Co for the amount of P3.15 million or P63.00 per bag.^[10] On February 15, 1999, Co sold these withdrawal authorities to Lim allegedly at the price of P64.00 per bag or a total of P3.2 million.^[11]

Using the withdrawal authorities, Lim withdrew the cement bags from FRCC on a staggered basis. She successfully withdrew 2,800 bags of cement, and sold back some of the withdrawal authorities, covering 10,000 bags, to Co.

Sometime in April 1999, FRCC did not allow Lim to withdraw the remaining 37,200 bags covered by the withdrawal authorities. Lim clarified the matter with Co and Borja, who explained that the plant implemented a price increase and would only release the goods once Lim pays for the price difference or agrees to receive a lesser quantity of cement. Lim objected and maintained that the withdrawal authorities she bought were not subject to price fluctuations. Lim sought legal recourse after her demands for Co to resolve the problem with the plant or for the return of her money had failed.

The criminal case

An Information for Estafa through Misappropriation or Conversion was filed against Co before Branch 154 of the Regional Trial Court (RTC) of Pasig City. The accusatory portion thereof reads:

On or about between the months of February and April 1999, in San Juan, Metro Manila and within the jurisdiction of this Honorable Court, the accused, with intent to defraud Lily Lim, with grave abuse of

confidence, with unfaithfulness, received in trust from Lily Lim cash money in the amount of P2,380,800.00 as payment for the 37,200 bags of cement, under obligation to deliver the 37,200 bags of cement to said Lily Lim, but far from complying with his obligation, misappropriated, misapplied and converted to his own personal use and benefit the said amount of P2,300,800.00 [sic] and despite demands, the accused failed and refused to return said amount, to the damage and prejudice of Lily Lim in the amount of P2,380,800.00.

Contrary to Law.^[12]

The private complainant, Lily Lim, participated in the criminal proceedings to prove her damages. She prayed for Co to return her money amounting to P2,380,800.00, foregone profits, and legal interest, and for an award of moral and exemplary damages, as well as attorney's fees.^[13]

On November 19, 2003, the RTC of Pasig City, Branch 154, rendered its Order^[14] acquitting Co of the estafa charge for insufficiency of evidence. The criminal court's Order reads:

The first and second elements of the crime of estafa [with abuse of confidence under Article 315, paragraph 1(b)] for which the accused is being charged and prosecuted were not established by the prosecution's evidence.

x x x x

In view of the absence of the essential requisites of the crime of estafa for which the accused is being charged and prosecuted, as above discussed, the Court has no alternative but to dismiss the case against the accused for insufficiency of evidence.^[15]

WHEREFORE, in view of the foregoing, the Demurrer to Evidence is GRANTED, and the accused is hereby **ACQUITTED** of the crime of estafa charged against him under the present information for insufficiency of evidence.

Insofar as the civil liability of the accused is concerned, however, set this case for the reception of his evidence on the matter on December 11, 2003 at 8:30 o'clock [sic] in the morning.

SO ORDERED.^[16]

After the trial on the civil aspect of the criminal case, the Pasig City RTC also relieved Co of civil liability to Lim in its December 1, 2004 Order.^[17] The dispositive portion of the Order reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered holding the accused **CHARLIE CO not civilly liable** to the private complainant Lily Lim.

SO ORDERED.^[18]

Lim sought a reconsideration of the above Order, arguing that she has presented preponderant evidence that Co committed estafa against her.^[19]

The trial court denied the motion in its Order^[20] dated February 21, 2005.

On March 14, 2005, Lim filed her notice of appeal^[21] on the civil aspect of the criminal case. Her appeal was docketed as CA-G.R. CV No. 85138 and raffled to the Second Division of the CA.

The civil action for specific performance

On April 19, 2005, Lim filed a complaint for specific performance and damages before Branch 21 of the RTC of Manila. The defendants in the civil case were Co and all other parties to the withdrawal authorities, Tigerbilt, Fil-Cement Center, FRCC, Southeast Asia Cement, and La Farge Corporation. The complaint, docketed as Civil Case No. 05-112396, asserted two causes of action: breach of contract and abuse of rights. Her allegations read:

ALLEGATIONS COMMON TO
ALL CAUSES OF ACTION

x x x x

23. Charlie Co obligated himself to deliver to Lily Lim 50,000 bags of cement of P64.00 per bag on an x-plant basis within 3 months from the date of their transaction, i.e. February 15, 1999. Pursuant to said agreement, Lily Lim paid Charlie Co P3.2 Million while Charlie Co delivered to Lily Lim FR Cement Withdrawal Authorities representing 50,000 bags of cement.

24. The withdrawal authorities issued by FR Cement Corp. allowed the assignee or holder thereof to withdraw within a six-month period from date a certain amount of cement indicated therein. The Withdrawal Authorities given to Lily Lim were dated either 3 February 1999 or 23 February 1999. The Withdrawal Authorities were first issued to Tigerbilt and Fil-Cement Center which in turn assigned them to Charlie Co. Charlie Co then assigned the Withdrawal Authorities to Lily Lim on February 15, 1999. Through these series of assignments, Lily Lim acquired all the rights (rights to withdraw cement) granted in said Withdrawal Authorities.

25. That these Withdrawal Authorities are valid is established by the fact that FR Cement earlier allowed Lily Lim to withdraw 2,800 bags of cement on the basis thereof.

26. However, sometime 19 April 1999 (within the three (3)-month period agreed upon by Charlie Co and Lily Lim and certainly within the six (6)month period indicated in the Withdrawal Authorities issued by FR Cement Corp.), Lily Lim attempted but failed to withdraw the remaining bags of cement on account of FR Cement's unjustified refusal to honor the Withdrawal Authorities. x x x

x x x x

FIRST CAUSE OF ACTION:
BREACH OF CONTRACT

30. Charlie Co committed and is therefore liable to deliver to Lily Lim 37,200 bags of cement. If he cannot, then he must pay her the current fair market value thereof.

31. FR Cement Corporation is also liable to deliver to Lily Lim the amount of cement as indicated in the Withdrawal Authorities it issued. xxx FR Cement Corporation has no right to impose price adjustments as a qualification for honoring the Withdrawal Authorities.

32. Fil-Cement Center, Tigerbilt and Gail Borja as the original holders/ assignees of the Withdrawal Authorities repeatedly assured Lily Lim that the same were valid and would be honored. They are liable to make good on their assurances.

SECOND CAUSE OF ACTION:
ABUSE OF RIGHTS AND UNJUST ENRICHMENT

33. Charlie Co's acts of falsely representing to Lily Lim that she may be able to withdraw the cement from FR Cement Corp. caused Lily Lim to incur expenses and losses. Such act was made without justice, without giving Lily Lim what is due her and without observing honesty and good faith, all violative of the law, more specifically Articles 19 and 20 of the Civil Code. Such willful act was also made by Charlie Co in a manner contrary to morals, good customs or public policy, in violation of Article 21 of the Civil Code.

34. FR Cement Corporation's unjust refusal to honor the Withdrawal Authorities they issued also caused damage to Lily Lim. Further, FR Cement Corporation's act of withholding the 37,200 bags of cement despite earning income therefor constitutes as an unjust enrichment because FR Cement Corporation acquired income through an act or performance by another or any other means at the expense of another without just or legal ground in violation of Article 22 of the Civil Code.

35. Fil-Cement Center, Tigerbilt and Gail Borja's false assurances that Lily Lim would be able to withdraw the remaining 37,200 bags of cement caused Lily Lim to incur expenses and losses. x x x Moreover, Fil-Cement Center admitted receiving payment for said amount of cement, thus they are deemed to have come into possession of money at the expense of