

THIRD DIVISION

[G.R. No. 160322, August 24, 2011]

**PILIPINO TELEPHONE CORPORATION, PETITIONER, VS.
RADIOMARINE NETWORK (SMARTNET) PHILIPPINES, INC.,
RESPONDENT.**

DECISION

ABAD, J.:

This case is about a party's right to summary judgment when the pleadings show that there are no genuine issues of fact to be tried.

The Facts and the Case

On December 11, 1996 petitioner Pilipino Telephone Corporation (Piltel) expressed its willingness, on purely best effort, to buy in 1997 from respondent Radiomarine Network, Inc. (Smartnet) 300,000 units of various brands of cellular phones and accessories (Motorola, Mitsubishi, and Ericsson).^[1]

On the following day, December 12, 1996, Piltel agreed to sell to Smartnet a 3,500-square meter lot,^[2] known as the Valgoson Property, in Makati City for P560 million. Smartnet agreed to pay Piltel P180 million as down payment with the balance of P380 million to be partly set off against the obligations that Piltel was to incur from its projected purchase of cellular phones and accessories from Smartnet. Smartnet agreed to settle any unpaid portion of the purchase price of the land after the set off on or about April 30, 1997.

The contract to sell between the parties provides:

The total consideration of FIVE HUNDRED SIXTY MILLION PESOS (P560,000,000.00) shall be paid by the VENDEE [Smartnet], without the need of any demand, to the VENDOR [Piltel] in the following manner:

(a) a downpayment in the amount of ONE HUNDRED EIGHTY MILLION (P180,000,000.00) PESOS, to be paid on or before December 28, 1996;

(b) Any and all outstanding payables which the VENDOR [Piltel] owes to the VENDEE [Smartnet] in consideration of the cellular phone units and accessories ordered by the VENDOR [Piltel] and delivered by the VENDEE [Smartnet] between the initial downpayment date i.e. December 28, 1996 and April 30, 1997, shall be credited to the VENDEE [Smartnet] as additional payment of the purchase price.

(c) The remaining balance, after deducting (a) and (b) above, shall be

paid on or about April 30, 1997. It is expressly understood however, that the VENDOR [Piltel] shall submit to the VENDEE [Smartnet], on or about April 20, 1997, a Statement of Account updating the deliveries of cellular phones and its outstanding amount in order that the VENDEE [Smartnet] can prepare the final payment. In this way, the amount of final payment shall be made to the VENDOR [Piltel] on or before April 30, 1997. Should the VENDOR [Piltel] be delayed in the submission of the said Statement on the stipulated date, the date of payment of the remaining balance shall be automatically adjusted for a period equivalent to the number of days by which the VENDOR [Piltel] is delayed in the submission thereof.

[3]

The parties also agreed on a rescission and forfeiture clause^[4] which provided that, if Smartnet fails to pay the full price of the land within the stipulated period and within five days after receipt of a notice of delinquency, it would automatically forfeit to Piltel 10% of the P180 million down payment or P18 million and the contract shall be without force and effect.

Smartnet failed to pay the P380 million balance of the purchase price on or about the date it fell due. On December 19, 1997 Piltel returned P50 million to Smartnet, a portion of the P180 million down payment that it received. Smartnet later requested Piltel for the return of the remaining P130 million but the latter failed to do so.^[5]

On December 1, 1999 Smartnet filed a complaint^[6] against Piltel for rescission of their contract to sell involving the Valgoson Property or its partial specific performance before the Regional Trial Court (RTC)^[7] of Makati City in Civil Case 99-2041. Smartnet alleged, among other things, that it withheld payment of the balance of the purchase price of the subject property because Piltel reneged on its commitment to purchase from Smartnet 300,000 units of cellular phones and accessories.

Smartnet asked the court to (a) order Piltel to convey to Smartnet at least 32% interest in the Valgoson Property, representing the value of its down payment of P180 million or, in the alternative, order Piltel to return to Smartnet its P180 million down payment plus interest; (b) order Piltel to pay Smartnet P81,300,764.96, representing the value of the 300,000 units of various cellular phones which it acquired pursuant to Piltel's commitment to buy them but which commitment Piltel disregarded, plus interest, as actual and compensatory damages; and (c) order Piltel to pay Smartnet P500,000.00 in attorney's fees.

In its answer with counterclaims,^[8] Piltel claimed that the agreement to purchase cellular phones and accessories was not part of its contract with Smartnet for the sale of the Valgoson Property and that Piltel committed to buy equipment from Smartnet only on a best effort basis. For this reason, Piltel pointed out, Smartnet did not have the power to rescind the contract to sell the Valgoson Property and, hence, cannot invoke that contract's rescission and forfeiture clause. Piltel sought full payment by Smartnet of the purchase price for the Valgoson Property, moral damages, exemplary damages, and litigation expenses.

On October 3, 2000 Smartnet filed a motion for partial summary judgment^[9] for the return of the down payment it paid Piltel. The RTC granted the motion on November 13, 2000^[10] and ordered Piltel to return the P180 million down payment that it received less the forfeited amount of P18 million and the cash advance of P50 million or a net of P112 million, with interest at 6% per annum from the time of the extrajudicial demand on it on October 20, 1998 until finality of the judgment and an additional 12% legal interest after the judgment becomes final and executory until the same is satisfied. Piltel filed a motion for reconsideration which the RTC denied for lack of merit on January 30, 2001.

On March 15, 2001 Smartnet filed a manifestation and motion, withdrawing its two remaining causes of action and praying for the issuance of a writ of execution. On March 20, 2001 it filed an alternative motion for execution pending appeal of the RTC's partial decision.

On April 4, 2001 Piltel filed with the Court of Appeals (CA)^[11] a special civil action for *certiorari* with application for a temporary restraining order and a writ of preliminary injunction. Piltel alleged that the RTC presiding judge, Reinato G. Quilala, gravely abused his discretion when he issued a partial summary judgment in the case and denied Piltel's motion for reconsideration. But the CA dismissed the petition, prompting Piltel to challenge such dismissal before this Court in G.R. 152092.

Meantime, on April 23, 2001 the RTC granted (a) Smartnet's motion to withdraw its remaining causes of action and (b) its motion for execution pending appeal.^[12] Consequently, a writ of execution was issued on April 24, 2001.

On April 25, 2001 Piltel filed a notice of appeal to the CA from the judgment of November 13, 2000 and from the April 23, 2001 Order that allowed execution pending appeal. The appeal to the CA was docketed as CA-G.R. CV 71805.

On April 26, 2001 Piltel filed with the RTC a motion to defer execution pending appeal upon the posting of a supersedeas bond. The RTC denied the motion. Piltel filed a motion for reconsideration but the court denied it on August 14, 2001^[13] and directed Piltel to pay 12% interest on the judgment amount from April 23, 2001, when it allowed the execution pending appeal. Piltel filed a supplemental notice of appeal to the CA from this last order.

On June 11, 2003 the CA dismissed Piltel's appeal in CA-G.R. CV 71805.^[14] The appellate court held that the RTC did not err when it granted summary judgment since there were no genuine issues involved in the case. The CA said that Smartnet's failure to pay the balance of the purchase price *ipso facto* avoids the contract to sell. With the denial of its motion for reconsideration,^[15] Piltel filed this petition under Rule 45 of the Rules of Court.

Meantime, the Court in G.R. 152092^[16] denied Piltel's petition on August 4, 2010. The Court affirmed the CA's ruling in CA-G.R. SP 64155 that appeal, and not *certiorari*, is the proper remedy. Moreover, it held that Piltel committed forum shopping when it filed a petition for *certiorari* and a notice of appeal to assail the same resolutions and orders of the RTC.