

FIRST DIVISION

[G.R. No. 164703, May 04, 2010]

**ALLAN C. GO, DOING BUSINESS UNDER THE NAME AND STYLE
"ACG EXPRESS LINER," PETITIONER, VS. MORTIMER F.
CORDERO, RESPONDENT.**

[G.R. No. 164747]

**MORTIMER F. CORDERO, PETITIONER, VS. ALLAN C. GO, DOING
BUSINESS UNDER THE NAME AND STYLE "ACG EXPRESS LINER,"
FELIPE M. LANDICHO AND VINCENT D. TECSON, RESPONDENTS.**

D E C I S I O N

VILLARAMA, JR., J.:

For review is the Decision^[1] dated March 16, 2004 as modified by the Resolution^[2] dated July 22, 2004 of the Court of Appeals (CA) in CA-G.R. CV No. 69113, which affirmed with modifications the Decision^[3] dated May 31, 2000 of the Regional Trial Court (RTC) of Quezon City, Branch 85 in Civil Case No. 98-35332.

The factual antecedents:

Sometime in 1996, Mortimer F. Cordero, Vice-President of Pamana Marketing Corporation (Pamana), ventured into the business of marketing inter-island passenger vessels. After contacting various overseas fast ferry manufacturers from all over the world, he came to meet Tony Robinson, an Australian national based in Brisbane, Australia, who is the Managing Director of Aluminium Fast Ferries Australia (AFFA).

Between June and August 1997, Robinson signed documents appointing Cordero as the exclusive distributor of AFFA catamaran and other fast ferry vessels in the Philippines. As such exclusive distributor, Cordero offered for sale to prospective buyers the 25-meter Aluminium Passenger catamaran known as the SEACAT 25.^[4]

After negotiations with Felipe Landicho and Vincent Tecson, lawyers of Allan C. Go who is the owner/operator of ACG Express Liner of Cebu City, a single proprietorship, Cordero was able to close a deal for the purchase of two (2) SEACAT 25 as evidenced by the Memorandum of Agreement dated August 7, 1997.^[5] Accordingly, the parties executed Shipbuilding Contract No. 7825 for one (1) high-speed catamaran (SEACAT 25) for the price of US\$1,465,512.00.^[6] Per agreement between Robinson and Cordero, the latter shall receive commissions totalling US\$328,742.00, or 22.43% of the purchase price, from the sale of each vessel.^[7]

Cordero made two (2) trips to the AFFA Shipyard in Brisbane, Australia, and on one (1) occasion even accompanied Go and his family and Landicho, to monitor the progress of the building of the vessel. He shouldered all the expenses for airfare,

food, hotel accommodations, transportation and entertainment during these trips. He also spent for long distance telephone calls to communicate regularly with Robinson, Go, Tecson and Landicho.

However, Cordero later discovered that Go was dealing directly with Robinson when he was informed by Dennis Padua of Wartsila Philippines that Go was canvassing for a second catamaran engine from their company which provided the ship engine for the first SEACAT 25. Padua told Cordero that Go instructed him to fax the requested quotation of the second engine to the Park Royal Hotel in Brisbane where Go was then staying. Cordero tried to contact Go and Landicho to confirm the matter but they were nowhere to be found, while Robinson refused to answer his calls. Cordero immediately flew to Brisbane to clarify matters with Robinson, only to find out that Go and Landicho were already there in Brisbane negotiating for the sale of the second SEACAT 25. Despite repeated follow-up calls, no explanation was given by Robinson, Go, Landicho and Tecson who even made Cordero believe there would be no further sale between AFFA and ACG Express Liner.

In a handwritten letter dated June 24, 1998, Cordero informed Go that such act of dealing directly with Robinson violated his exclusive distributorship and demanded that they respect the same, without prejudice to legal action against him and Robinson should they fail to heed the same.^[8] Cordero's lawyer, Atty. Ernesto A. Tabujara, Jr. of ACCRA law firm, also wrote ACG Express Liner assailing the fraudulent actuations and misrepresentations committed by Go in connivance with his lawyers (Landicho and Tecson) in breach of Cordero's exclusive distributorship appointment.^[9]

Having been apprised of Cordero's demand letter, Thyne & Macartney, the lawyer of AFFA and Robinson, faxed a letter to ACCRA law firm asserting that the appointment of Cordero as AFFA's distributor was for the purpose of one (1) transaction only, that is, the purchase of a high-speed catamaran vessel by ACG Express Liner in August 1997. The letter further stated that Cordero was offered the exclusive distributorship, the terms of which were contained in a draft agreement which Cordero allegedly failed to return to AFFA within a reasonable time, and which offer is already being revoked by AFFA.^[10]

As to the response of Go, Landicho and Tecson to his demand letter, Cordero testified before the trial court that on the same day, Landicho, acting on behalf of Go, talked to him over the telephone and offered to amicably settle their dispute. Tecson and Landicho offered to convince Go to honor his exclusive distributorship with AFFA and to purchase all vessels for ACG Express Liner through him for the next three (3) years. In an effort to amicably settle the matter, Landicho, acting in behalf of Go, set up a meeting with Cordero on June 29, 1998 between 9:30 p.m. to 10:30 p.m. at the Mactan Island Resort Hotel lobby. On said date, however, only Landicho and Tecson came and no reason was given for Go's absence. Tecson and Landicho proposed that they will convince Go to pay him US\$1,500,000.00 on the condition that they will get a cut of 20%. And so it was agreed between him, Landicho and Tecson that the latter would give him a weekly status report and that the matter will be settled in three (3) to four (4) weeks and neither party will file an action against each other until a final report on the proposed settlement. No such report was made by either Tecson or Landicho who, it turned out, had no intention to do so and were just buying time as the catamaran vessel was due to arrive from

Australia. Cordero then filed a complaint with the Bureau of Customs (BOC) to prohibit the entry of SEACAT 25 from Australia based on misdeclaration and undervaluation. Consequently, an Alert Order was issued by Acting BOC Commissioner Nelson Tan for the vessel which in fact arrived on July 17, 1998. Cordero claimed that Go and Robinson had conspired to undervalue the vessel by around US\$500,000.00.^[11]

On August 21, 1998, Cordero instituted Civil Case No. 98-35332 seeking to hold Robinson, Go, Tecson and Landicho liable jointly and solidarily for conniving and conspiring together in violating his exclusive distributorship in bad faith and wanton disregard of his rights, thus depriving him of his due commissions (balance of unpaid commission from the sale of the first vessel in the amount of US\$31,522.01 and unpaid commission for the sale of the second vessel in the amount of US\$328,742.00) and causing him actual, moral and exemplary damages, including P800,000.00 representing expenses for airplane travel to Australia, telecommunications bills and entertainment, on account of AFFA's untimely cancellation of the exclusive distributorship agreement. Cordero also prayed for the award of moral and exemplary damages, as well as attorney's fees and litigation expenses.^[12]

Robinson filed a motion to dismiss grounded on lack of jurisdiction over his person and failure to state a cause of action, asserting that there was no act committed in violation of the distributorship agreement. Said motion was denied by the trial court on December 20, 1999. Robinson was likewise declared in default for failure to file his answer within the period granted by the trial court.^[13] As for Go and Tecson, their motion to dismiss based on failure to state a cause of action was likewise denied by the trial court on February 26, 1999.^[14] Subsequently, they filed their Answer denying that they have anything to do with the termination by AFFA of Cordero's authority as exclusive distributor in the Philippines. On the contrary, they averred it was Cordero who stopped communicating with Go in connection with the purchase of the first vessel from AFFA and was not doing his part in making progress status reports and airing the client's grievances to his principal, AFFA, such that Go engaged the services of Landicho to fly to Australia and attend to the documents needed for shipment of the vessel to the Philippines. As to the inquiry for the Philippine price for a Wartsila ship engine for AFFA's other on-going vessel construction, this was merely requested by Robinson but which Cordero misinterpreted as indication that Go was buying a second vessel. Moreover, Landicho and Tecson had no transaction whatsoever with Cordero who had no document to show any such shipbuilding contract. As to the supposed meeting to settle their dispute, this was due to the malicious demand of Cordero to be given US\$3,000,000 as otherwise he will expose in the media the alleged undervaluation of the vessel with the BOC. In any case, Cordero no longer had cause of action for his commission for the sale of the second vessel under the memorandum of agreement dated August 7, 1997 considering the termination of his authority by AFFA's lawyers on June 26, 1998.^[15]

Pre-trial was reset twice to afford the parties opportunity to reach a settlement. However, on motion filed by Cordero through counsel, the trial court reconsidered the resetting of the pre-trial to another date for the third time as requested by Go, Tecson and Landicho, in view of the latter's failure to appear at the pre-trial conference on January 7, 2000 despite due notice. The trial court further confirmed

that said defendants misled the trial court in moving for continuance during the pre-trial conference held on December 10, 1999, purportedly to go abroad for the holiday season when in truth a Hold-Departure Order had been issued against them.

[16] Accordingly, plaintiff Cordero was allowed to present his evidence *ex parte*.

Cordero's testimony regarding his transaction with defendants Go, Landicho and Tecson, and the latter's offer of settlement, was corroborated by his counsel who also took the witness stand. Further, documentary evidence including photographs taken of the June 29, 1998 meeting with Landicho, Tecson and Atty. Tabujara at Shangri-la's Mactan Island Resort, photographs taken in Brisbane showing Cordero, Go with his family, Robinson and Landicho, and also various documents, communications, vouchers and bank transmittals were presented to prove that: (1) Cordero was properly authorized and actually transacted in behalf of AFFA as exclusive distributor in the Philippines; (2) Cordero spent considerable sums of money in pursuance of the contract with Go and ACG Express Liner; and (3) AFFA through Robinson paid Cordero his commissions from each scheduled payment made by Go for the first SEACAT 25 purchased from AFFA pursuant to Shipbuilding Contract No. 7825.[17]

On May 31, 2000, the trial court rendered its decision, the dispositive portion of which reads as follows:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered in favor of Plaintiff and against defendants Allan C. Go, Tony Robinson, Felipe Landicho, and Vincent Tecson. As prayed for, defendants are hereby ordered to pay Plaintiff jointly and solidarily, the following:

1. On the First Cause of Action, the sum total of SIXTEEN MILLION TWO HUNDRED NINETY ONE THOUSAND THREE HUNDRED FIFTY TWO AND FORTY THREE CENTAVOS (P16,291,352.43) as actual damages with legal interest from 25 June 1998 until fully paid;
2. On the Second Cause of Action, the sum of ONE MILLION PESOS (P1,000,000.00) as moral damages;
3. On the Third Cause of Action, the sum of ONE MILLION PESOS (P1,000,000.00) as exemplary damages; and
4. On the Fourth Cause of Action, the sum of ONE MILLION PESOS (P1,000,000.00) as attorney's fees;

Costs against the defendants.

SO ORDERED.[18]

Go, Robinson, Landicho and Tecson filed a motion for new trial, claiming that they have been unduly prejudiced by the negligence of their counsel who was allegedly unaware that the pre-trial conference on January 28, 2000 did not push through for the reason that Cordero was then allowed to present his evidence *ex-parte*, as he

had assumed that the said *ex-parte* hearing was being conducted only against Robinson who was earlier declared in default.^[19] In its Order dated July 28, 2000, the trial court denied the motion for new trial.^[20] In the same order, Cordero's motion for execution pending appeal was granted. Defendants moved to reconsider the said order insofar as it granted the motion for execution pending appeal.^[21] On August 8, 2000, they filed a notice of appeal.^[22]

On August 18, 2000, the trial court denied the motion for reconsideration and on August 21, 2000, the writ of execution pending appeal was issued.^[23] Meanwhile, the notice of appeal was denied for failure to pay the appellate court docket fee within the prescribed period.^[24] Defendants filed a motion for reconsideration and to transmit the case records to the CA.^[25]

On September 29, 2000, the CA issued a temporary restraining order at the instance of defendants in the certiorari case they filed with said court docketed as CA-G.R. SP No. 60354 questioning the execution orders issued by the trial court. Consequently, as requested by the defendants, the trial court recalled and set aside its November 6, 2000 Order granting the *ex-parte* motion for release of garnished funds, cancelled the scheduled public auction sale of levied real properties, and denied the *ex-parte* Motion for Break-Open Order and *Ex-Parte* Motion for Encashment of Check filed by Cordero.^[26] On November 29, 2000, the trial court reconsidered its Order dated August 21, 2000 denying due course to the notice of appeal and forthwith directed the transmittal of the records to the CA.^[27]

On January 29, 2001, the CA rendered judgment granting the petition for certiorari in CA-G.R. SP No. 60354 and setting aside the trial court's orders of execution pending appeal. Cordero appealed the said judgment in a petition for review filed with this Court which was eventually denied under our Decision dated September 17, 2002.^[28]

On March 16, 2004, the CA in CA-G.R. CV No. 69113 affirmed the trial court (1) in allowing Cordero to present his evidence *ex-parte* after the unjustified failure of appellants (Go, Tecson and Landicho) to appear at the pre-trial conference despite due notice; (2) in finding that it was Cordero and not Pamana who was appointed by AFFA as the exclusive distributor in the Philippines of its SEACAT 25 and other fast ferry vessels, which is not limited to the sale of one (1) such catamaran to Go on August 7, 1997; and (3) in finding that Cordero is entitled to a commission per vessel sold for AFFA through his efforts in the amount equivalent to 22.43% of the price of each vessel or US\$328,742.00, and with payments of US\$297,219.91 having been made to Cordero, there remained a balance of US\$31,522.09 still due to him. The CA sustained the trial court in ruling that Cordero is entitled to damages for the breach of his exclusive distributorship agreement with AFFA. However, it held that Cordero is entitled only to commission for the sale of the first catamaran obtained through his efforts with the remaining unpaid sum of US\$31,522.09 or P1,355,449.90 (on the basis of US\$1.00=P43.00 rate) with interest at 6% per annum from the time of the filing of the complaint until the same is fully paid. As to the P800,000.00 representing expenses incurred by Cordero for transportation, phone bills, entertainment, food and lodging, the CA declared there was no basis for such award, the same being the logical and necessary consequences of the exclusive distributorship agreement which are normal in the field of sales and distribution, and