

FIRST DIVISION

[G.R. NO. 147970, March 31, 2006]

**PCL INDUSTRIES MANUFACTURING CORPORATION,
PETITIONER, VS. THE COURT OF APPEALS AND ASA COLOR &
CHEMICAL INDUSTRIES, INC., RESPONDENTS**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

This resolves the petition for certiorari seeking the reversal of the Decision^[1] of the Court of Appeals (CA) promulgated on February 21, 2001, which affirmed the Decision of the Regional Trial Court (RTC) of Quezon City, Branch 226; and the CA Resolution dated May 9, 2001 denying petitioner's motion for reconsideration.

The antecedent facts are as follows:

On October 10, 1995, private respondent filed a complaint with the RTC for Sum of Money with Preliminary Attachment against herein petitioner. Private respondent claims that during the period from January 18, 1994 to April 14, 1994, petitioner purchased and received from it various printing ink materials with a total value of P504,906.00, payable within 30 days from the respective dates of invoices; and that petitioner, in bad faith, failed to comply with the terms of the sale and failed to pay its obligations despite repeated verbal and written demands.

Petitioner was served with summons together with the Writ of Preliminary Attachment on October 20, 1995. On October 23, 1995, petitioner filed a Motion to Dissolve and/or Discharge Writ of Preliminary Attachment. On November 20, 1995, the trial court issued an Order denying petitioner's motion to dissolve the writ of preliminary attachment. Petitioner's motion for reconsideration of said order was also denied per Order dated January 2, 1996. Petitioner no longer elevated to the higher courts the matter of the propriety of the issuance of the writ of preliminary attachment.

In the meantime, on October 30, 1995, petitioner filed its Answer with Counterclaim. Petitioner claims that the various printing ink materials delivered to it by private respondent were defective and sometime in August, October, and November of 1993, they have returned ink materials to private respondent as shown by several Transmittal Slips. Nevertheless, petitioner admits that it continued to buy ink materials from private respondent in 1994 despite having rejected ink materials delivered by private respondent in 1993. Petitioner, however, insists that the ink materials delivered by private respondent in 1994 were also defective and they made known their complaints to Frankie, the authorized representative of private respondent. In a letter dated June 30, 1995, petitioner informed private respondent that it had been complaining to its (private respondent's) representative about the quality of the ink materials but nothing was done to solve the matter. Private

respondent replied through a letter dated July 16, 1995, that it was giving petitioner the option to return the products delivered, "sealed and unused" within one week from receipt of said letter or pay the full amount of its obligation. Petitioner answered in a letter dated September 26, 1995, that private respondent should pick up at its plant the remaining unused defective ink materials, and requested to meet with private respondent to thresh out the matter. No meeting was ever held. Petitioner further claims that it suffered damages in the amount of P1,592,794.50 because its customers rejected the finished plastic products it delivered, complaining of the bad smell, which, according to petitioner, was caused by the defective ink materials supplied by private respondent.

After trial on the merits, the trial court rendered its Decision dated January 8, 1999, the dispositive portion of which reads thus:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff. Defendant PCL Industries Manufacturing Corporation is hereby ordered to pay plaintiff:

- 1) P504,906.00 plus 20% interest per annum from April 1994 until fully paid;
- 2) 25% of the above amount as and for attorney's fees; and
- 3) cost of suit.

The counterclaim of defendant is hereby dismissed for insufficiency of evidence.

SO ORDERED.^[2]

The RTC Decision was appealed by herein petitioner to the CA. On February 21, 2001, the CA promulgated its Decision affirming the RTC judgment. The CA held that there was sufficient evidence to prove that herein petitioner had the intention of defrauding private respondent when it contracted the obligation because it agreed to pay within 30 days from the date of purchase but once the merchandise was in its possession, it refused to pay. Furthermore, the CA ruled that the issue on the propriety of the issuance of the writ of preliminary attachment should be laid to rest since petitioner no longer questioned the trial court's orders before the higher courts.

As to the alleged defect of the ink delivered by private respondent, both the trial court and the CA found that the evidence presented by petitioner was insufficient to prove that it was indeed the ink from private respondent which caused the unwanted smell in petitioner's finished plastic products. The trial court's analysis of the evidence led it to the following conclusions, to wit:

[D]efendant presented transmittal receipts, which allegedly represent the items returned by defendant [herein petitioner] to plaintiff [herein respondent].

x x x x

A closer look at these three transmittal receipts would readily show that

they are all for deliveries made in 1993, whereas the items admittedly received by defendant and listed in paragraph 2 of the Complaint are all delivered and dated from January 18, 1994 to April 14, 1994.

The items, therefore, returned for being defective and communicated by defendant to plaintiff are for those printing ink materials delivered in 1993 and these are not the items left unpaid and in issue in this present Complaint.

There is no other proof of demand made by defendant to plaintiff corporation as to communicate to plaintiff any defect in the printing ink materials delivered in 1994 except the demand letter (Exhibit "42") which is dated September 26, 1995.

As admitted by defendant's witness, Eleno Cayabyab, the demands made by Mr. Jovencio Lim to plaintiff had been oral or verbal only and made only on two occasions. In fact said witness cannot remember exactly when these oral demands were made by Mr. Jovencio Lim, x x x

x x x x

As regards the testimony of defendant's witness Jovencio Lim that defendant's end-users returned the plastic packaging materials to defendant and defendant had to reimburse its clients of the amount paid by them and defendant allegedly suffered damages, defendant failed to present sufficient evidence of this allegation. x x x^[3]

Affirming the foregoing findings of the trial court, the CA further noted that:

As may be observed, as early as January 31, 1994, the appellant [herein petitioner] had received complaints from its customers about the alleged unwanted smell of their plastic products. However, no steps were taken to investigate which of its several suppliers delivered the defective ink and, if indeed, the appellee's ink materials were the cause of the smell, no immediate communications were sent to the latter. On the contrary, it (appellant) continued to place orders and receive deliveries from the appellee. **Worse, the appellant failed to convincingly show that the appellant stopped using the subject ink materials upon notice of its customers of the alleged unwanted smell of the products. Conversely, the appellant continued using the same in their production of plastic materials which would only show that the cause of the alleged stinking smell cannot be attributed to the subject ink materials used.** The appellant tried to convince us that the subject ink materials were the same ink delivered by the appellee and used in the products that were returned because of the unwanted smell. However, its evidence fails to impress us.

There is no indication that the plasticized pouches printed by the defendant-appellant and returned by its customers were printed with the use of the paint delivered by the plaintiff-appellee. The former's evidence on this point are either self-serving or unreliable, or totally unworthy of credence, as shown by the

following:

1) The "work process" forms contain the names of two (2) or three (3) suppliers, as shown by the following:

- Exh. "12" — STOCK/ASA
- "13" — SIMCOR/ASA
- "14" — SIMCOR/ASA
- "15" — SIMCOR/ASA
- "16" — SYNPAAC/ASA
- "17" — SYNPAAC/ASA
- "19" — SYNPAAC/ASA
- "20" — SYNPAAC/ASA/CDI
- "21" — SYNPAAC/ASA

This is an indication that **the supplier of the obnoxious paint materials has not been properly identified or pinpointed.**

2) The "Memorandum" to the appellant's Production Department from its Records/Receiving Section is an internal memo that does not indicate which of their several suppliers delivered the "inferior quality of ink". No witness from the appellant's Production Department was presented to attest that the ink supplied by the appellee was found defective. Not even the person who prepared the said "Work Process" sheets was presented to explain the entries thereon.

3) Exhibits "30", "31" and "32" are supposedly memos from Frank F. Tanos of the Omega Manufacturing (one of the appellant's customers), alleging that they have rejected certain printed materials due to "unwanted smell". Again, these memos do not indicate the source of such unwanted smell. In any case, the memos were respectively dated June 15, 1994, July 15, 1994 and March 30, 1995 - - which dates are too far away from the deliveries made by the appellee.

4) The defendant-appellant made returns of ink products to the appellee much earlier on August 3, 1993, August 6, 1993, October 13, 1993 and November 3, 1993 as shown by the delivery receipts/return slips of such dates. According to the appellee, these were samples that were really returnable if not acceptable. This explanation appears to be plausible, since the quantity involved appears to be unusually low, compared to the questioned and unpaid deliveries. At any rate, no similar delivery receipts or return slips were presented to show that the subject ink materials were indeed rejected and returned by the appellant to the appellee. On the contrary, the appellant admits that they still have them in their possession for the reason that they were not picked up by the appellee's representative. Such reasoning appears to be shallow and unworthy of credence. For if the materials were indeed not picked up within a reasonable time by the appellee's representative, the appellant should have taken steps to return them; otherwise they will be held liable for the value thereof.

5) The defendant-appellant never made any written or formal complaint about the alleged inferior quality ink and no steps were taken to demand restitution or rectification.

Its letter dated June 30, 1995 was the first time it made a communication to the appellee about the alleged inferior quality of the ink delivered by the latter. This letter was its answer to the appellee's letter of demand for payment. Obviously, the appellant's letter was written to serve as an excuse for its failure to pay for its contractual obligations. In any case, as a reaction to such letter, the appellee dared the appellant to return the materials within one week, through its letter of July 16, 1995. Obviously, no such return was made.^[4] (Emphasis supplied)

Petitioner then filed the present petition for review on certiorari on the following grounds:

I.

THE RESPONDENT COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION IN ISSUING A WRIT OF PRELIMINARY ATTACHMENT EX PARTE WITHOUT ANY LEGAL BASIS AND ON GROUNDS NOT AUTHORIZED UNDER RULE 57 OF THE RULES OF COURT

II.

THE RESPONDENT COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AS ITS JUDGMENT WAS BASED ON A MISAPPREHENSION OF FACTS AND ITS FINDINGS ARE NOT SUPPORTED BY THE EVIDENCE EXTANT IN THE RECORDS OF THIS CASE

III.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN NOT REVERSING THE RULING OF THE TRIAL COURT ^[5]

First of all, although the petition states that it is one for *certiorari* under Rule 65 of the Rules of Court as it imputes grave abuse of discretion committed by the CA, the Court shall treat the petition as one for review on *certiorari* under Rule 45, considering that it was filed within the reglementary period for filing a petition for review on *certiorari* and the issues and arguments raised basically seek the review of the CA judgment.

Secondly, it should be pointed out that petitioner mistakenly stated that it was the CA that issued the writ of preliminary attachment. Said writ was issued by the trial court. On appeal, the CA merely upheld the trial court's order, ruling that the applicant's (herein private respondent's) affidavit was sufficient basis for the issuance of the writ because it stated that petitioner had the intention of defrauding private respondent by agreeing to pay its purchases within 30 days but then refused to pay the same once in possession of the merchandise.

The Court, however, finds the issuance of the Writ of Preliminary Attachment to be