

## SECOND DIVISION

[ G.R. No. 152927, January 14, 2004 ]

**PEPSI COLA PRODUCTS (PHILS), PETITIONER, VS. RUSTICO P. PATAN, JR., GREGORIO C. APANTO, JR., GENELYN PONGCOL, AND DENNIS PESTANO, RESPONDENTS.**

### DECISION

#### **CALLEJO, SR., J.:**

Before the Court is the petition for review on certiorari filed by Pepsi Cola Products (Phils.), Inc. seeking to reverse and set aside the Decision<sup>[1]</sup> dated October 18, 2001, of the Court of Appeals in CA-G.R. CV No. 60383 insofar as it directed the petitioner to pay the respondents five hundred pesos (P500) each solely on the ground of equity. Likewise sought to be reversed and set aside is the appellate court's Resolution dated April 10, 2002, denying the petitioner's motion for reconsideration.

The case arose from the following facts:

Some time in 1991, the petitioner, Pepsi Cola Products (Phils.), Inc. launched the "Number Fever" under-the-crown promotional campaign for its bottled soft drink products including Pepsi, 7-Up, Mirinda and Mountain Dew. With the prior approval and under the supervision of the Department of Trade and Industry (DTI), winning crowns or resealable caps were printed and seeded into the market nationwide. These crowns were identified by specific number combinations, consisting of a three-digit number and an alpha-numeric code, and were randomly pre-selected by computer.

In compliance with the terms and conditions set by the DTI, a list of the winning crowns were placed in the safety deposit box of the United Coconut Planters Bank (UCPB) in Makati City. The DTI-approved printed posters advertising the "Number Fever" promotional campaign enjoined the participants to look for the winning three-digit number and security code under the crowns or resealable caps.

On May 25, 1992, during the extended period of the promotional campaign, the petitioner announced "349" as the first three digits of the number combination identifying the winning crowns for the next day. A few hours after the announcement was made, the petitioner received reports that a number of people were trying to redeem non-winning crowns bearing the number "349" and security codes "L-2560-FQ" and "L-3560-FQ" in the amounts of P100,000 and P1,000,000 each crown. On May 28, 1992, the DTI and the petitioner jointly opened the safety deposit box where the list of winning crowns had been kept and it was verified that crowns bearing the number "349" and security codes "L-2560-FQ" and "L-3560-FQ" were not winning crowns.

To appease the holders of the non-winning "349" crowns, and to avert the escalating violence against its employees and properties, the petitioner offered P500 for every non-winning "349" crown that would be presented on or before June 12, 1992. A total of 490,116 holders of non-winning "349" crowns availed themselves of the offer.

Respondents Rustico Patan, Jr., Gregorio Apanto, Jr., Genelyn Pongcol and Dennis Pestano, holders of non-winning "349" crowns, refused the offer. Instead, they filed their respective complaints for specific performance and recovery of winning prize with damages against the petitioner with the Regional Trial Court of Surigao City. The cases, docketed as Civil Case Nos. 4112, 4130, 4146 and 4193, were consolidated and jointly tried.

After trial on the merits, the court *a quo*, in its Joint Decision dated February 27, 1998, dismissed the complaints against the petitioner for lack of cause of action and/or insufficiency of evidence.

The respondents elevated the case to the Court of Appeals (CA). However, for failure of respondents Apanto, Jr. and Pongcol to pay the necessary docket fees within the prescribed period despite notice, their respective appeals were deemed abandoned and consequently dismissed. Only respondent Patan, Jr. filed an appellant's brief.

On October 18, 2001, the CA rendered the assailed decision. It substantially affirmed the findings of the court *a quo* that the respondents did not win in the petitioner's "Number Fever" promotional campaign as their crowns were not the winning crowns. The CA, like the court *a quo*, found that the petitioner had not been negligent in the implementation of its "Number Fever" promotional campaign. Nonetheless, the CA awarded all the respondents P500 each "in the interest of justice and equity."<sup>[2]</sup>

It is that latter portion of the CA decision that the petitioner now assails. The petitioner alleges that:

#### I

The Court of Appeals grossly deviated from applicable jurisprudence when it ordered PCPPI to pay respondents the amount of P500.00 each simply on the basis of equity, despite finding that PCPPI was neither at fault nor negligent in the conduct of the Number Fever Promotion. Unless reversed, the award of P500:00 can serve as precedent for the thousands of other "349" claimants and translate to millions in pesos in liability for PCPPI.

#### II.

The Court of Appeals grossly deviated from applicable jurisprudence when it accorded affirmative relief to respondents APANTO, PONGCOL AND PESTANO, whose respective appeals were never perfected.

#### III.

The Court of Appeals violated the fundamental principles of *res judicata*