

SECOND DIVISION

[G.R. No. 147324 and G.R. No. 147334, May 25, 2004]

**PHILIPPINE COMMUNICATIONS SATELLITE CORPORATION,
PETITIONER, VS. GLOBE TELECOM, INC. (FORMERLY AND GLOBE
MCKAY CABLE AND RADIO CORPORATION), RESPONDENTS.**

**GLOBE TELECOM, INC., PETITIONER, VS. PHILIPPINE
COMMUNICATION SATELLITE CORPORATION, RESPONDENT.**

D E C I S I O N

TINGA, J.:

Before the Court are two *Petitions* for Review assailing the Decision of the Court of Appeals, dated 27 February 2001, in CA-G.R. CV No. 63619.^[1]

The facts of the case are undisputed.

For several years prior to 1991, Globe Mckay Cable and Radio Corporation, now Globe Telecom, Inc. (Globe), had been engaged in the coordination of the provision of various communication facilities for the military bases of the United States of America (US) in Clark Air Base, Angeles, Pampanga and Subic Naval Base in Cubi Point, Zambales. The said communication facilities were installed and configured for the exclusive use of the US Defense Communications Agency (USDCA), and for security reasons, were operated only by its personnel or those of American companies contracted by it to operate said facilities. The USDCA contracted with said American companies, and the latter, in turn, contracted with Globe for the use of the communication facilities. Globe, on the other hand, contracted with local service providers such as the Philippine Communications Satellite Corporation (Philcomsat) for the provision of the communication facilities.

On 07 May 1991, Philcomsat and Globe entered into an Agreement whereby Philcomsat obligated itself to establish, operate and provide an IBS Standard B earth station (earth station) within Cubi Point for the exclusive use of the USDCA.^[2] The term of the contract was for 60 months, or five (5) years.^[3] In turn, Globe promised to pay Philcomsat monthly rentals for each leased circuit involved.^[4]

At the time of the execution of the Agreement, both parties knew that the Military Bases Agreement between the Republic of the Philippines and the US (RP-US Military Bases Agreement), which was the basis for the occupancy of the Clark Air Base and Subic Naval Base in Cubi Point, was to expire in 1991. Under Section 25, Article XVIII of the 1987 Constitution, foreign military bases, troops or facilities, which include those located at the US Naval Facility in Cubi Point, shall not be allowed in the Philippines unless a new treaty is duly concurred in by the Senate and ratified by a majority of the votes cast by the people in a national referendum when

the Congress so requires, and such new treaty is recognized as such by the US Government.

Subsequently, Philcomsat installed and established the earth station at Cubi Point and the USDCA made use of the same.

On 16 September 1991, the Senate passed and adopted Senate Resolution No. 141, expressing its decision not to concur in the ratification of the Treaty of Friendship, Cooperation and Security and its Supplementary Agreements that was supposed to extend the term of the use by the US of Subic Naval Base, among others. [5] The last two paragraphs of the Resolution state:

FINDING that the Treaty constitutes a defective framework for the continuing relationship between the two countries in the spirit of friendship, cooperation and sovereign equality: Now, therefore, be it

Resolved by the Senate, as it is hereby resolved, To express its decision not to concur in the ratification of the Treaty of Friendship, Cooperation and Security and its Supplementary Agreements, at the same time reaffirming its desire to continue friendly relations with the government and people of the United States of America. [6]

On 31 December 1991, the Philippine Government sent a *Note Verbale* to the US Government through the US Embassy, notifying it of the Philippines' termination of the RP-US Military Bases Agreement. The *Note Verbale* stated that since the RP-US Military Bases Agreement, as amended, shall terminate on 31 December 1992, the withdrawal of all US military forces from Subic Naval Base should be completed by said date.

In a letter dated 06 August 1992, Globe notified Philcomsat of its intention to discontinue the use of the earth station effective 08 November 1992 in view of the withdrawal of US military personnel from Subic Naval Base after the termination of the RP-US Military Bases Agreement. Globe invoked as basis for the letter of termination Section 8 (Default) of the Agreement, which provides:

Neither party shall be held liable or deemed to be in default for any failure to perform its obligation under this Agreement if such failure results directly or indirectly from force majeure or fortuitous event. Either party is thus precluded from performing its obligation until such force majeure or fortuitous event shall terminate. For the purpose of this paragraph, force majeure shall mean circumstances beyond the control of the party involved including, but not limited to, any law, order, regulation, direction or request of the Government of the Philippines, strikes or other labor difficulties, insurrection riots, national emergencies, war, acts of public enemies, fire, floods, typhoons or other catastrophies or acts of God.

Philcomsat sent a reply letter dated 10 August 1992 to Globe, stating that "we expect [Globe] to know its commitment to pay the stipulated rentals for the remaining terms of the Agreement even after [Globe] shall have discontinue[d] the use of the earth station after November 08, 1992." [7] Philcomsat referred to Section 7 of the Agreement, stating as follows:

7. DISCONTINUANCE OF SERVICE

Should [Globe] decide to discontinue with the use of the earth station after it has been put into operation, a written notice shall be served to PHILCOMSAT at least sixty (60) days prior to the expected date of termination. Notwithstanding the non-use of the earth station, [Globe] shall continue to pay PHILCOMSAT for the rental of the actual number of T1 circuits in use, but in no case shall be less than the first two (2) T1 circuits, for the remaining life of the agreement. However, should PHILCOMSAT make use or sell the earth station subject to this agreement, the obligation of [Globe] to pay the rental for the remaining life of the agreement shall be at such monthly rate as may be agreed upon by the parties.^[8]

After the US military forces left Subic Naval Base, Philcomsat sent Globe a letter dated 24 November 1993 demanding payment of its outstanding obligations under the Agreement amounting to US\$4,910,136.00 plus interest and attorney's fees. However, Globe refused to heed Philcomsat's demand.

On 27 January 1995, Philcomsat filed with the Regional Trial Court of Makati a *Complaint* against Globe, praying that the latter be ordered to pay liquidated damages under the Agreement, with legal interest, exemplary damages, attorney's fees and costs of suit. The case was raffled to Branch 59 of said court.

Globe filed an Answer to the Complaint, insisting that it was constrained to end the Agreement due to the termination of the RP-US Military Bases Agreement and the non-ratification by the Senate of the Treaty of Friendship and Cooperation, which events constituted force majeure under the Agreement. Globe explained that the occurrence of said events exempted it from paying rentals for the remaining period of the Agreement.

On 05 January 1999, the trial court rendered its Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Ordering the defendant to pay the plaintiff the amount of Ninety Two Thousand Two Hundred Thirty Eight US Dollars (US\$92,238.00) or its equivalent in Philippine Currency (computed at the exchange rate prevailing at the time of compliance or payment) representing rentals for the month of December 1992 with interest thereon at the legal rate of twelve percent (12%) per annum starting December 1992 until the amount is fully paid;
2. Ordering the defendant to pay the plaintiff the amount of Three Hundred Thousand (P300,000.00) Pesos as and for attorney's fees;
3. Ordering the DISMISSAL of defendant's counterclaim for lack of merit; and

4. With costs against the defendant.

SO ORDERED.^[9]

Both parties appealed the trial court's Decision to the Court of Appeals.

Philcomsat claimed that the trial court erred in ruling that: (1) the non-ratification by the Senate of the Treaty of Friendship, Cooperation and Security and its Supplementary Agreements constitutes *force majeure* which exempts Globe from complying with its obligations under the Agreement; (2) Globe is not liable to pay the rentals for the remainder of the term of the Agreement; and (3) Globe is not liable to Philcomsat for exemplary damages.

Globe, on the other hand, contended that the RTC erred in holding it liable for payment of rent of the earth station for December 1992 and of attorney's fees. It explained that it terminated Philcomsat's services on 08 November 1992; hence, it had no reason to pay for rentals beyond that date.

On 27 February 2001, the Court of Appeals promulgated its Decision dismissing Philcomsat's appeal for lack of merit and affirming the trial court's finding that certain events constituting *force majeure* under Section 8 the Agreement occurred and justified the non-payment by Globe of rentals for the remainder of the term of the Agreement.

The appellate court ruled that the non-ratification by the Senate of the Treaty of Friendship, Cooperation and Security, and its Supplementary Agreements, and the termination by the Philippine Government of the RP-US Military Bases Agreement effective 31 December 1991 as stated in the Philippine Government's *Note Verbale* to the US Government, are acts, directions, or requests of the Government of the Philippines which constitute *force majeure*. In addition, there were circumstances beyond the control of the parties, such as the issuance of a formal order by Cdr. Walter Corliss of the US Navy, the issuance of the letter notification from ATT and the complete withdrawal of all US military forces and personnel from Cubi Point, which prevented further use of the earth station under the Agreement.

However, the Court of Appeals ruled that although Globe sought to terminate Philcomsat's services by 08 November 1992, it is still liable to pay rentals for the December 1992, amounting to US\$92,238.00 plus interest, considering that the US military forces and personnel completely withdrew from Cubi Point only on 31 December 1992.^[10]

Both parties filed their respective *Petitions for Review* assailing the *Decision* of the Court of Appeals.

In **G.R. No. 147324**,^[11] petitioner Philcomsat raises the following assignments of error:

A. THE HONORABLE COURT OF APPEALS ERRED IN ADOPTING A DEFINITION OF *FORCE MAJEURE* DIFFERENT FROM WHAT ITS LEGAL DEFINITION FOUND IN ARTICLE 1174 OF THE CIVIL CODE, PROVIDES, SO AS TO EXEMPT GLOBE TELECOM FROM COMPLYING WITH ITS OBLIGATIONS UNDER THE SUBJECT

AGREEMENT.

- B. THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT GLOBE TELECOM IS NOT LIABLE TO PHILCOMSAT FOR RENTALS FOR THE REMAINING TERM OF THE AGREEMENT, DESPITE THE CLEAR TENOR OF SECTION 7 OF THE AGREEMENT.
- C. THE HONORABLE COURT OF APPEALS ERRED IN DELETING THE TRIAL COURT'S AWARD OF ATTORNEY'S FEES IN FAVOR OF PHILCOMSAT.
- D. THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT GLOBE TELECOM IS NOT LIABLE TO PHILCOMSAT FOR EXEMPLARY DAMAGES.^[12]

Philcomsat argues that the termination of the RP-US Military Bases Agreement cannot be considered a fortuitous event because the happening thereof was foreseeable. Although the Agreement was freely entered into by both parties, Section 8 should be deemed ineffective because it is contrary to Article 1174 of the Civil Code. Philcomsat posits the view that the validity of the parties' definition of *force majeure* in Section 8 of the Agreement as "circumstances beyond the control of the party involved including, but not limited to, any law, order, regulation, direction or request of the Government of the Philippines, strikes or other labor difficulties, insurrection riots, national emergencies, war, acts of public enemies, fire, floods, typhoons or other catastrophies or acts of God," should be deemed subject to Article 1174 which defines fortuitous events as events which could not be foreseen, or which, though foreseen, were inevitable.^[13]

Philcomsat further claims that the Court of Appeals erred in holding that Globe is not liable to pay for the rental of the earth station for the entire term of the Agreement because it runs counter to what was plainly stipulated by the parties in Section 7 thereof. Moreover, said ruling is inconsistent with the appellate court's pronouncement that Globe is liable to pay rentals for December 1992 even though it terminated Philcomsat's services effective 08 November 1992, because the US military and personnel completely withdrew from Cubi Point only in December 1992. Philcomsat points out that it was Globe which proposed the five-year term of the Agreement, and that the other provisions of the Agreement, such as Section 4.1^[14] thereof, evince the intent of Globe to be bound to pay rentals for the entire five-year term.^[15]

Philcomsat also maintains that contrary to the appellate court's findings, it is entitled to attorney's fees and exemplary damages.^[16]

In its *Comment* to Philcomsat's *Petition*, Globe asserts that Section 8 of the Agreement is not contrary to Article 1174 of the Civil Code because said provision does not prohibit parties to a contract from providing for other instances when they would be exempt from fulfilling their contractual obligations. Globe also claims that the termination of the RP- US Military Bases Agreement constitutes *force majeure* and exempts it from complying with its obligations under the Agreement.^[17] On the issue of the propriety of awarding attorney's fees and exemplary damages to Philcomsat, Globe maintains that Philcomsat is not entitled thereto because in refusing to pay rentals for the remainder of the term of the Agreement, Globe only acted in accordance with its rights.^[18]