

SECOND DIVISION

[G.R. No. 147010, July 18, 2003]

**PIONEER INSURANCE AND SURETY CORPORATION, PETITIONER,
VS. DE DIOS TRANSPORTATION CO., INC. AND DE DIOS
MARIKINA TRANSIT CORPORATION, RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

This is a petition for review on *certiorari* of the October 31, 2000 Decision^[1] of the Court of Appeals in CA-G.R. SP No. 58519^[2] and its January 30, 2001 Resolution denying the petitioner's motion for reconsideration of the said decision.

The petition at bar arose from the following factual milieu:

Herein respondents De Dios Transportation Co. (DDTC) and De Dios Marikina Transport Corporation (DMTC) were the franchise holders and owners of fifty-eight buses plying the Buendia-Ayala-UP and Monumento-Ayala routes. On February 23, 1995, the respondents, as vendors, executed a Deed of Conditional Sale covering the said buses and their franchise in favor of Willy Choa Coyukiat (Coyukiat) and/or Goldfinger Transport Corporation (Goldfinger) as vendees. In the said contract, the respondents bound and obliged themselves to sell to Coyukiat and Goldfinger the fifty-eight buses and their corresponding franchise, and to deliver and turn over possession of the said buses to the vendees for the price of P12,000,000, payable as follows:

(a) A downpayment of ONE MILLION (P1,000,000.00) PESOS in personal check shall be paid upon the execution of this Contract;

(b) The balance of ELEVEN MILLION (P11,000,000.00) to be paid by eleven (11) postdated checks at the rate of ONE MILLION (P1,000,000.00) a month all of which shall likewise be delivered to the VENDORS upon the execution of this Contract; provided, however, that the date of the first postdated check shall be thirty days from the full and actual delivery of the units as provided in paragraph 3 hereof and the subsequent dates of the other postdated checks shall be reckoned from the date of the first postdated check;^[3]

The parties further agreed that in case of default by the vendors:

8. CONSEQUENCES OF DEFAULT. It is agreed and understood that the representations and warranties made by the VENDORS in this Contract are the primary motivations/reasons that induced, convinced and moved the VENDEE to enter into this contract and the Deed of Sale. In the event of default by the VENDORS, the VENDEE shall at its option either consider the obligations of the

VENDORS under the Contract immediately due and demandable and the VENDORS shall immediately execute the Deed of Sale of the buses and their corresponding lines/franchises without need of any further payments or reimburse all the amounts paid by the VENDEE to the VENDORS. In either case, the VENDORS shall, likewise, be liable to the VENDEE for liquidated damages in the amount of Twelve Million (P12,000,000.00) pesos.

In the event of default by the VENDEE, the VENDORS shall at their option, declare the entire obligation due and demandable, and demand for the payment of the entire balance of the purchase price or declare the contract as without any further force and effect and that all payments previously paid are forfeited. In either case, the VENDEE shall, likewise, be liable for liquidated damages in the amount of Twelve Million (P12,000,000.00) Pesos in favor of the VENDORS.^[4]

The respondents, as vendors, guaranteed that the franchise and routes to Buendia-Ayala-UP and *vice versa* and Monumento-Ayala *via* EDSA were valid, fully and completely utilizable, and merely required registration with the Land Transportation Office (LTO) for the vendees to be able to operate the same.^[5] The vendees delivered the downpayment and postdated checks drawn upon the account of Goldfinger with the Philbanking Corporation for the balance of the purchase price.

On March 23, 1995, the respondents delivered the buses to the vendees. The respondents were able to encash the check for the downpayment of the purchase price. However, before the respondents could deposit the first check for the remaining balance, the vendees stopped all payments, on their claim that, contrary to the representations of the respondents, some of the buses were not in good running condition. The color of the buses had been changed without the proper permits or clearances from the Land Transportation Franchising and Regulatory Board (LTFRB), the LTO and the Philippine National Police (PNP). Consequently, the vendees failed to operate the buses. The vendees were, likewise, unable to operate the buses along the Buendia-Ayala-UP route, notwithstanding the representation of the respondents that only registration with the LTO was required.

On July 20, 1995, the vendees, through its counsel, the Padilla Reyes & De la Torre Law Office, filed a complaint against the respondents and Philbanking Corporation as defendants with the Regional Trial Court (RTC) of Quezon City for rescission of contract with a plea for a temporary restraining order or writ of preliminary injunction.^[6]

Therein plaintiffs Coyukiat and Goldfinger alleged that defendants (the respondents herein) reneged on their obligation to deliver the buses in good running condition. By reason of the defendants' misrepresentation regarding the registration of the buses, they failed to secure certificates of registration under their names, preventing them from operating the buses, thus causing tremendous losses to their business which impelled them to stop the payments of the eleven remaining postdated checks. The complaint contained the following prayer:

ON THE FIRST CAUSE OF ACTION

1. Declaring the Deed of Conditional Sale entered into between the plaintiffs Willy Choa Coyukiatt and Goldfinger Transport Corporation and the defendants De Dios Transportation Co., Inc. and the De Dios Marikina Transit Corporation as RESCINDED.
2. Ordering the defendants De Dios Transportation Co. Inc and the De Dios Marikina Transit Corporation to return the One Million Pesos (P1,000,000.00) down payment and all other amounts given by the plaintiffs to them under the Deed of Conditional Sale.
3. Requiring the defendants De Dios Transportation Co. Inc. and the De Dios Marikina Transit Corporation to accept the return from the plaintiffs of the fifty-eight (58) passenger buses;
4. Ordering the defendant De Dios Transportation Co. Inc. and the De Dios Marikina Transit Corporation to pay jointly and severally to the plaintiffs the amount of Twelve Million Pesos (P12,000,000.00) as liquidated damages.

ON THE SECOND CAUSE OF ACTION

5. On the second cause of action, ordering the defendant De Dios Transportation Co. Inc. and the De Dios Marikina Transit Corporation to pay jointly and severally to the plaintiffs the amount of One Million Pesos (P1,000,000.00) as moral damages.

ON THE THIRD CAUSE OF ACTION

6. On the third cause of action, ordering the defendants De Dios Transportation Co. Inc. and the De Dios Marikina Transit Corporation to pay jointly and severally the amount of One Million Pesos (P1,000,000.00) as exemplary damages.

ON THE FOURTH CAUSE OF ACTION

7. On the fourth cause of action, ordering the defendants De Dios Transportation Co. Inc. and the De Dios Marikina Transit Corporation to pay jointly and severally to the plaintiffs the amounts of Five Hundred Thousand Pesos (P500,000.00) as attorney's fees and at least One Hundred Thousand Pesos (P100,000.00) as litigation expenses.^[7]

The plaintiffs therein prayed for the issuance of a temporary restraining order, and after due notice and hearing, to issue a writ of preliminary injunction, enjoining the therein defendants DDTC and DMTC, their agents, representatives and all persons acting in their behalf from encashing, depositing, discounting or transacting the postdated checks issued by plaintiff Goldfinger as listed in Annex "B" of the complaint, and enjoining the defendant Philbanking Corporation (Del Monte branch), its agents, representatives and all persons acting in its behalf from encashing, accepting, clearing, or transacting in any other manner, the postdated checks listed in Annex "A" of the complaint.

On July 21, 1995, the RTC issued a temporary restraining order enjoining the defendants and their agents from encashing, accepting, clearing, or transacting twelve postdated checks issued by therein plaintiff Coyukiat.^[8] On August 11, 1995, the RTC granted the plaintiffs' plea for a writ of preliminary injunction on a bond of P11,000,000. The plaintiffs posted Bond No. 71336 issued by herein petitioner Pioneer Insurance & Surety Corporation for the amount of P11,000,000.^[9]

On August 17, 1995, the plaintiffs filed an amended complaint dropping Philbanking Corporation as party-defendant.

The defendants, in their answer with counterclaim, denied the material allegations of the complaint and prayed for the dismissal thereof. The defendants interposed counterclaims for damages and attorney's fees, thus: (a) P11,000,000 representing the plaintiffs' unpaid balance; (b) P12,000,000 representing liquidating damages; (c) P1,000,000 for moral damages; (d) P1,000,000 for exemplary damages; and (e) twenty percent of the claim representing attorneys fees and P1,000 for each court appearance.^[10]

On September 21, 1998, the trial court issued an order dismissing the case on motion of the defendants for failure of the plaintiffs to prosecute the same. As directed by the trial court on motion of the defendants, the latter adduced evidence *ex parte* to prove their counterclaim.

On December 14, 1998, the RTC rendered a decision dismissing the complaint and granting the counterclaims of the defendants, the dispositive portion of which is herein quoted:

WHEREFORE, as prayed for, defendants' counterclaim is hereby GRANTED, and judgment is hereby rendered ordering plaintiff to pay the defendants the following:

- (1) ELEVEN MILLION (P11,000,000.00) PESOS representing the plaintiff's unpaid balance on the consideration of the Deed of Conditional Sale;
- (2) TWELVE MILLION (P12,000,000.00) PESOS as liquidated damages;
- (3) FIVE HUNDRED THOUSAND PESOS (P500,000.00) as moral damages and FIVE HUNDRED THOUSAND PESOS (P500,000.00) as exemplary damages; and
- (4) TWO HUNDRED THOUSAND PESOS as attorney's fees and P113,783.50 as litigation expenses;
- (5) Costs of suit.^[11]

Aggrieved, the plaintiffs Coyukiat and Goldfinger interposed an appeal to the Court of Appeals (CA) which was docketed as CA-G.R. CV No. 61310.

On August 20, 1999, the appellants, through Atty. Ronaldo Reyes, filed their brief with the CA. Before the appellees (the respondents herein) could file their brief, the

Padilla Reyes & De la Torre Law Office filed on September 14, 1999 its withdrawal of appearance as counsel for the appellants. On the same day, the Luis Q.U. Uranza, Jr. & Associates filed its appearance as counsel for the appellants and filed a notice of withdrawal of appeal. However, the withdrawal of appearance of the Padilla Reyes & De la Torre Law Office, the appearance of the Luis Q.U. Uranza, Jr. & Associates and the notice of withdrawal of appeal filed by Luis Q.U. Uranza, Jr. & Associates did not bear the conformity of the appellants. The appellees (herein respondents) were served with copies thereof thru their counsel by registered mail.^[12]

On September 15, 1999, the respondents filed with the CA a Motion to Execute Against the Injunction Bond posted by herein petitioner Pioneer Insurance and Surety Corporation, serving a copy thereof on Atty. Ronaldo Reyes.^[13]

The respondents alleged *inter alia* in their motion that the appellants Coyukiat and Goldfinger were not entitled to a temporary restraining order or a writ of preliminary injunction. They contend that were it not for the said temporary restraining order and writ of preliminary injunction, the appellants would not have been able to hide and dispose of their assets and sell the buses, thus frustrating the collection of the amount of P11,000,000 representing the respondents' counterclaim.^[14] The CA issued a resolution requiring the petitioner to file its comment on the motion.

On September 16, 1999, the CA issued a resolution granting the withdrawal of the Padilla Reyes & De la Torre Law Office as counsel for the appellants and noting the entry of the Luis Q.U. Uranza, Jr. & Associates as new counsel. However, with respect to the withdrawal of their appeal, the CA directed the appellants to submit their written conformity thereto, and held in abeyance the resolution of the said incident pending compliance by the appellants to its resolution.^[15]

On September 28, 1999, the appellants submitted to the CA their conformity to the withdrawal of their appeal. On October 8, 1999, the CA issued a resolution (a) declaring that the appeal of the appellants was considered withdrawn and dismissed; and (b) directing the appellees to address their motion to execute the bond with the trial court after the remand thereto of the records. On the same day, an entry of judgment was issued by the CA.^[16]

On November 4, 1999, the petitioner filed with the CA its comment on the opposition to the motion to execute filed by the respondents with the CA on the following grounds:

I

There is no basis for defendants-appellees to execute against the injunction bond.^[17]

II

The Decision of the lower court has become final and, therefore, defendants-appellees' Motion can no longer be entertained.^[18]

III