407 Phil. 884

FIRST DIVISION

[G.R. No. 126751, March 28, 2001]

SAFIC ALCAN & CIE, PETITIONER, VS. IMPERIAL VEGETABLE OIL CO., INC., RESPONDENT.

D E C I S I O N

YNARES-SANTIAGO, J.:

Petitioner Safic Alcan & Cie (hereinafter, "Safic") is a French corporation engaged in the international purchase, sale and trading of coconut oil. It filed with the Regional Trial Court of Manila, Branch XXV, a complaint dated February 26, 1987 against private respondent Imperial Vegetable Oil Co., Inc. (hereinafter, "IVO"), docketed as Civil Case No. 87-39597. Petitioner Safic alleged that on July 1, 1986 and September 25, 1986, it placed purchase orders with IVO for 2,000 long tons of crude coconut oil, valued at US$222.50 per ton, covered by Purchase Contract Nos. A601446 and A601655, respectively, to be delivered within the month of January 1987. Private respondent, however, failed to deliver the said coconut oil and, instead, offered a "wash out" settlement, whereby the coconut oil subject of the purchase contracts were to be "sold back" to IVO at the prevailing price in the international market at the time of wash out. Thus, IVO bound itself to pay to Safic the difference between the said prevailing price and the contract price of the 2,000 long tons of crude coconut oil, which amounted to US$293,500.00. IVO failed to pay this amount despite repeated oral and written demands.

Under its second cause of action, Safic alleged that on eight occasions between April 24, 1986 and October 31, 1986, it placed purchase orders with IVO for a total of 4,750 tons of crude coconut oil, covered by Purchase Contract Nos. A601297A/B, A601384, A601385, A601391, A601415, A601681, A601683 and A601770A/B/C/. When IVO failed to honor its obligation under the wash out settlement narrated above, Safic demanded that IVO make marginal deposits within forty-eight hours on the eight purchase contracts in amounts equivalent to the difference between the contract price and the market price of the coconut oil, to compensate it for the damages it suffered when it was forced to acquire coconut oil at a higher price. IVO failed to make the prescribed marginal deposits on the eight contracts, in the aggregate amount of US$391,593.62, despite written demand therefor.

The demand for marginal deposits was based on the customs of the trade, as governed by the provisions of the standard N.I.O.P. Contract and the FOSFA Contract, to wit:

> N.I.O.P. Contract, Rule 54 - If the financial condition of either party to a contract subject to these rules becomes so impaired as to create a reasonable doubt as to the ability of such party to perform its obligations under the contract, the other party may from time to time demand marginal deposits to be made within forty-eight (48) hours after receipt of such demand, such deposits not to exceed the difference between the

> contract price and the market price of the goods covered by the contract on the day upon which such demand is made, such deposit to bear interest at the prime rate plus one percent (1%) per annum. Failure to make such deposit within the time specified shall constitute a breach of contract by the party upon whom demand for deposit is made, and all losses and expenses resulting from such breach shall be for the account of the party upon whom such demand is made. (Underscoring ours.)[1]
>
> FOSFA Contract, Rule 54 - BANKRUPTCY/INSOLVENCY: If before the fulfillment of this contract either party shall suspend payment, commit an act of bankruptcy, notify any of his creditors that he is unable to meet his debts or that he has suspended payment or that he is about to suspend payment of his debts, convene, call or hold a meeting either of his creditors or to pass a resolution to go into liquidation (except for a voluntary winding up of a solvent company for the purpose of reconstruction or amalgamation) or shall apply for an official moratorium, have a petition presented for winding up or shall have a Receiver appointed, the contract shall forthwith be closed, either at the market price then current for similar goods or, at the option of the other party at a price to be ascertained by repurchase or resale and the difference between the contract price and such closing-out price shall be the amount which the other party shall be entitled to claim shall be liable to account for under this contract *(sic)*. Should either party be dissatisfied with the price, the matter shall be referred to arbitration. Where no such resale or repurchase takes place, the closing-out price shall be fixed by a Price Settlement Committee appointed by the Federation. (Underscoring ours.)[2]

Hence, Safic prayed that IVO be ordered to pay the sums of US$293,500.00 and US$391,593.62, plus attorney's fees and litigation expenses. The complaint also included an application for a writ of preliminary attachment against the properties of IVO.

Upon Safic's posting of the requisite bond, the trial court issued a writ of preliminary attachment. Subsequently, the trial court ordered that the assets of IVO be placed under receivership, in order to ensure the preservation of the same.

In its answer, IVO raised the following special affirmative defenses: Safic had no legal capacity to sue because it was doing business in the Philippines without the requisite license or authority; the subject contracts were speculative contracts entered into by IVO's then President, Dominador Monteverde, in contravention of the prohibition by the Board of Directors against engaging in speculative paper trading, and despite IVO's lack of the necessary license from Central Bank to engage in such kind of trading activity; and that under Article 2018 of the Civil Code, if a contract which purports to be for the delivery of goods, securities or shares of stock is entered into with the intention that the difference between the price stipulated and the exchange or market price at the time of the pretended delivery shall be paid by the loser to the winner, the transaction is null and void.

IVO set up counterclaims anchored on harassment, paralyzation of business, financial losses, rumor-mongering and oppressive action. Later, IVO filed a supplemental counterclaim alleging that it was unable to operate its business

normally because of the arrest of most of its physical assets; that its suppliers were driven away; and that its major creditors have inundated it with claims for immediate payment of its debts, and China Banking Corporation had foreclosed its chattel and real estate mortgages.

During the trial, the lower court found that in 1985, prior to the date of the contracts sued upon, the parties had entered into and consummated a number of contracts for the sale of crude coconut oil. In those transactions, Safic placed several orders and IVO faithfully filled up those orders by shipping out the required crude coconut oil to Safic, totalling 3,500 metric tons. Anent the 1986 contracts being sued upon, the trial court refused to declare the same as gambling transactions, as defined in Article 2018 of the Civil Code, although they involved some degree of speculation. After all, the court noted, every business enterprise carries with it a certain measure of speculation or risk. However, the contracts performed in 1985, on one hand, and the 1986 contracts subject of this case, on the other hand, differed in that under the 1985 contracts, deliveries were to be made within two months. This, as alleged by Safic, was the time needed for milling and building up oil inventory. Meanwhile, the 1986 contracts stipulated that the coconut oil were to be delivered within period ranging from eight months to eleven to twelve months after the placing of orders. The coconuts that were supposed to be milled were in all likelihood not yet growing when Dominador Monteverde sold the crude coconut oil. As such, the 1986 contracts constituted trading in futures or in mere expectations.

The lower court further held that the subject contracts were *ultra vires* and were entered into by Dominador Monteverde without authority from the Board of Directors. It distinguished between the 1985 contracts, where Safic likewise dealt with Dominador Monteverde, who was presumably authorized to bind IVO, and the 1986 contracts, which were highly speculative in character. Moreover, the 1985 contracts were covered by letters of credit, while the 1986 contracts were payable by telegraphic transfers, which were nothing more than mere promises to pay once the shipments became ready. For these reasons, the lower court held that Safic cannot invoke the 1985 contracts as an implied corporate sanction for the high-risk 1986 contracts, which were evidently entered into by Monteverde for his personal benefit.

The trial court ruled that Safic failed to substantiate its claim for actual damages. Likewise, it rejected IVO's counterclaim and supplemental counterclaim.

Thus, on August 28, 1992, the trial court rendered judgment as follows:

> WHEREFORE, judgment is hereby rendered dismissing the complaint of plaintiff Safic Alcan & Cie, without prejudice to any action it might subsequently institute against Dominador Monteverde, the former President of Imperial Vegetable Oil Co., Inc., arising from the subject matter of this case. The counterclaim and supplemental counterclaim of the latter defendant are likewise hereby dismissed for lack of merit. No pronouncement as to costs.
>
> The writ of preliminary attachment issued in this case as well as the order placing Imperial Vegetable Oil Co., Inc. under receivership are hereby dissolved and set aside.[3]

Both IVO and Safic appealed to the Court of Appeals, jointly docketed as CA-G.R. CV No. 40820.

IVO raised only one assignment of error, *viz*:

> THE TRIAL COURT ERRED IN HOLDING THAT THE ISSUANCE OF THE WRIT OF PRELIMINARY ATTACHMENT WAS NOT THE MAIN CAUSE OF THE DAMAGES SUFFERED BY DEFENDANT AND IN NOT AWARDING DEFENDANT-APPELLANT SUCH DAMAGES.

For its part, Safic argued that:

> THE TRIAL COURT ERRED IN HOLDING THAT IVO'S PRESIDENT, DOMINADOR MONTEVERDE, ENTERED INTO CONTRACTS WHICH WERE *ULTRA VIRES* AND WHICH DID NOT BIND OR MAKE IVO LIABLE.
>
> THE TRIAL COURT ERRED IN HOLDING THAT SAFIC WAS UNABLE TO PROVE THE DAMAGES SUFFERED BY IT AND IN NOT AWARDING SUCH DAMAGES.
>
> THE TRIAL COURT ERRED IN NOT HOLDING THAT IVO IS LIABLE UNDER THE WASH OUT CONTRACTS.

On September 12, 1996, the Court of Appeals rendered the assailed Decision dismissing the appeals and affirming the judgment appealed from *in toto*.[4]

Hence, Safic filed the instant petition for review with this Court, substantially reiterating the errors it raised before the Court of Appeals and maintaining that the Court of Appeals grievously erred when:

> a. it declared that the 1986 forward contracts (i.e., Contracts Nos. A601446 and A60155 (sic) involving 2,000 long tons of crude coconut oil, and Contracts Nos. A601297A/B, A601385, A601391, A601415, A601681. A601683 and A601770A/B/C involving 4,500 tons of crude coconut oil) were unauthorized acts of Dominador Monteverde which do not bind IVO in whose name they were entered into. In this connection, the Court of Appeals erred when (i) it ignored its own finding that (a) Dominador Monteverde, as IVO's President, had "an implied authority to make any contract necessary or appropriate to the contract of the ordinary business of the company"; and (b) Dominador Monteverde had validly entered into similar forward contracts for and on behalf of IVO in 1985; (ii) it distinguished between the 1986 forward contracts despite the fact that the Manila RTC has struck down IVO's objection to the 1986 forward contracts (i.e. that they were highly speculative paper trading which the IVO Board of Directors had prohibited Dominador Monteverde from engaging in because it is a form of gambling where the parties do not intend actual delivery of the coconut oil sold) and instead found that the 1986 forward contracts were not gambling; (iii) it relied on the testimony of Mr. Rodrigo Monteverde in concluding that the IVO Board of Directors did not authorize its President, Dominador Monteverde, to enter into the 1986 forward contracts; and (iv) it did not find IVO, in any case, estopped from

denying responsibility for, and liability under, the 1986 forward contracts because IVO had recognized itself bound to similar forward contracts which Dominador Monteverde entered into (for and on behalf of IVO) with Safic in 1985 notwithstanding that Dominador Monteverde was (like in the 1986 forward contracts) not expressly authorized by the IVO Board of Directors to enter into such forward contracts;

b. it declared that Safic was not able to prove damages suffered by it, despite the fact that Safic had presented not only testimonial, but also documentary, evidence which proved the higher amount it had to pay for crude coconut oil (*vis-à-vis* the contract price it was to pay to IVO) when IVO refused to deliver the crude coconut oil bought by Safic under the 1986 forward contracts; and

c. it failed to resolve the issue of whether or not IVO is liable to Safic under the wash out contracts involving Contracts Nos. A601446 and A60155 (sic), despite the fact that Safic had properly raised the issue on its appeal, and the evidence and the law support Safic's position that IVO is so liable to Safic.

In fine, Safic insists that the appellate court grievously erred when it did not declare that IVO's President, Dominador Monteverde, validly entered into the 1986 contracts for and on behalf of IVO.

We disagree.

Article III, Section 3 [g] of the By-Laws[5] of IVO provides, among others, that -

> Section 3. *Powers and Duties of the President*. - The President shall be elected by the Board of Directors from their own number.
>
> He shall have the following duties:
>
> x x x x x x x x x
>
> [g] Have direct and active management of the business and operation of the corporation, conducting the same according to the orders, resolutions and instruction of the Board of Directors and according to his own discretion whenever and wherever the same is not expressly limited by such orders, resolutions and instructions.

It can be clearly seen from the foregoing provision of IVO's By-laws that Monteverde had no blanket authority to bind IVO to any contract. He must act according to the instructions of the Board of Directors. Even in instances when he was authorized to act according to his discretion, that discretion must not conflict with prior Board orders, resolutions and instructions. The evidence shows that the IVO Board knew nothing of the 1986 contracts[6] and that it did not authorize Monteverde to enter into speculative contracts.[7] In fact, Monteverde had earlier proposed that the company engage in such transactions but the IVO Board rejected his proposal.[8] Since the 1986 contracts marked a sharp departure from past IVO transactions, Safic should have obtained from Monteverde the prior authorization of the IVO