

THIRD DIVISION

[G.R. No. 141602, November 22, 2001]

PACSPORTS PHILS., INC., PETITIONER, VS. NICCOLO SPORTS, INC., RESPONDENT.

DECISION

SANDOVAL-GUTIERREZ, J.:

Petition for review on certiorari of the Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 52666, *"Niccolo Sports, Inc. vs. Hon. Manuel D. Victorino and Pacsports Phils., Inc."* promulgated on December 6, 1999 and January 17, 2000.

Pacsports Phils., Inc. (PPI), petitioner, is the exclusive distributor in the Philippines of sports products manufactured by Bridgestone Sports Company of Japan and Cross Creek International of the United States.

On April 28, 1998, petitioner PPI and Niccolo Sports, Inc. (NSI), respondent, entered into two (2) separate Exclusive Retail Agreements by virtue of which petitioner supplied respondent, on consignment basis, assorted Bridgestone and Cross Creek golf products to be sold by the latter in its outlet situated at the Second Level, Shangri-La Plaza Shopping Mall, Edsa corner Shaw Boulevard, Mandaluyong City. The agreements contain, among others, the following similarly worded stipulations:

"8. PAYMENTS

- a) NSI shall remit full payment, in Cash or Check, the Outlet's Gross Sales for the Month less NSI's margin on or before fifteen (15) days of the following month. Late Payments shall have the prior approval of PPI;
- b) The supply of all the products in the Retail Outlet is on a Consignment basis.

X X X

"11. TERM

This Agreement shall take effect from the Commencement Date and shall continue to be enforced for a period of three (3) years and shall be automatically renewed by mutual written agreement.

X X X

"12. TERMINATION

a)PPI shall have the right at any time to terminate this Agreement and repossess unpaid stock and display materials forthwith upon the occurrence of any of the following:

If NSI is in material breach of the terms and conditions of this Agreement and shall have failed to remedy such breach within sixty (60) days after being requested to do so by PPI; or

x x x

b)NSI shall have the right at any time to terminate this Agreement and shall be entitled to the reimbursement of all expenses during the operations of the Retail Outlet, including construction and/or renovation forthwith upon the occurrence of any of the following:

If PPI is in material breach of any of the terms and conditions of this Agreement and shall have failed to remedy such breach within (60) days after being requested to do so by NSI; or

x x x"

Petitioner PPI claims that after months of operation, respondent's obligations to it amounted to about P1.5 Million. Despite demand, respondent failed to pay and eventually, it pre-terminated the contracts. This prompted petitioner to file, on January 28, 1999, with the Regional Trial Court, Branch 141, Makati City, Civil Case No. 99-221 for damages with application for a writ of replevin against respondent alleging, *inter alia*:

"4.04. On 26 January 1999, without any legal nor contractual basis, NSI unilaterally terminated the Agreements (Annexes 'B' and 'C') effective immediately. Hereto attached and made integral part hereof as Annex "D" is a copy of NSI notice of termination.

"4.05. As a lame excuse for such unilateral termination, NSI cited supposed contractual violations committed by Pacsports - which, even if hypothetically admitted, do not constitute the 'material breach' contemplated in the Agreements (Annexes 'B' and 'C').

"4.06. Worse, despite actual knowledge that the subject properties are merely on consignment basis, NSI unjustly detained them and refused to allow Pacsports to retrieve the unsold inventory unless Pacsports pays the amount of P12,442,500.00 - a condition which cannot be read in any of the provision of the Agreements (Annexes 'B' and 'C') nor in any statutory or case law.

"4.07. To insure that Pacsports will not be able to retrieve its unsold inventory, NSI instructed the Shangri-La management not to allow the removal of any of merchandize from the mall premises without its written authorization. A security guard was likewise deployed by NSI for such

purpose. In this regard, attached hereto as Annex 'E' is a copy of NSI letter-instruction."

On the same day, the Makati RTC issued an order granting petitioner's application for a writ of replevin. However, petitioner did not pursue the implementation of this writ because respondent concealed the golf equipment to be seized. Instead, on February 26, 1999, petitioner applied for the issuance of a writ of preliminary injunction to compel respondent to turn over to petitioner the golf equipment and sales proceeds amounting to P1,186,468.65.

For its part, respondent NSI, on February 16, 1999, filed with the Regional Trial Court, Branch 91, Quezon City, Civil Case No. Q-99-36797 for "Breach and Confirmation of Termination of Contracts and Damages" against petitioner. The complaint alleges, among others, that:

x x x

"9. In flagrant breach, however, of the agreements and with incipient deceit and evident bad faith, defendant, on four (4) occasions, knowingly, deliberately and wantonly intercepted potential customers of plaintiff for some of the products, thereafter surreptitiously pursued them and closed for itself the sales for the particular products sought. In three (3) of these four (4) incidents defendants brazenly resorted to underselling to plaintiff's undue damage and prejudice;

x x x

"10. The fourth incident being the last straw as it were, plaintiff forthwith sent defendant a second letter dated 25 January 1999 which defendant received again through its General Manager, Mr. Rafael Mapua recalling the above-narrated incidents of blatant usurpation of potential customers of plaintiff and fraudulently underselling it in material breach of the agreements; giving notice of the termination of the agreements effective immediately, conformably to paragraph 12 (b) thereof; as well as offering three (3) options to defendant for the amicable settlement of the matter. A copy of this letter-complaint cum notice of termination is attached hereto as Annex 'E'.

"14. Hence, plaintiff was constrained as it was to bring the instant complaint. During the interim, plaintiff will continue to retain in pledge and withhold the remittance to defendant of its portion of the proceeds of the sales for the period December 01, 1998 to February 14, 1999 in the amount of P1,305,865.94 and the return of the remaining inventory of the products defendants had consigned to it, plaintiff being authorized to do so as defendant's commission agent under and by virtue of Articles 1912, 1913 and 1914 of the Civil Code."

On January 29, 1999, respondent NSI, citing the pendency of the Quezon City case, filed with the Makati RTC a motion to dismiss or suspend the proceedings in Civil Case No. 99-221.

Thereupon, petitioner PPI also filed with the Quezon City RTC a motion to dismiss Civil Case No. Q-99-36797 on the ground of pendency of the Makati City case.

On April 20, 1999, the Makati RTC issued an order denying respondent's motion to dismiss. In the same order, the Makati Court granted petitioner's application for a writ of preliminary mandatory injunction. Respondent filed a motion for reconsideration but was denied on May 6, 1999.

Meanwhile, the Quezon City RTC has not resolved petitioner's motion to dismiss.

Then, in a petition for certiorari and prohibition, respondent NSI questioned the orders of the Makati RTC dated April 20, 1999 and May 6, 1999 before the Court of Appeals in CA-G.R. SP No. 52666.

On December 6, 1999, the Court of Appeals promulgated a Decision, the dispositive portion of which reads:

"WHEREFORE, the petition is hereby GRANTED. The impugned Orders dated January 29, 1999 and May 6, 1999 of the respondent Judge are REVERSED and SET ASIDE. Respondent Judge is hereby directed to dismiss Civil Case No. 99-221, entitled: "*Pacsports Phils., Inc. vs. Niccolo Sports, Inc.* without prejudice to private respondent interposing its claim before the Quezon City case.

"SO ORDERED."

On January 17, 2000, the Court of Appeals denied petitioner's motion for reconsideration.

Hence, this petition.

The petition involves two (2) basic issues, to wit:

- 1) Which of the two cases should be dismissed by reason of *litis pendentia* - the Makati City case which was filed earlier or the Quezon City case which was filed later; and
- 2) Whether the order of the Makati RTC dated April 20, 1999 granting petitioner's application for a writ of preliminary mandatory injunction was issued with grave abuse of discretion.

As to the first issue, the parties concede that the Makati City case and the Quezon City case involve the same parties, rights asserted and reliefs prayed for, being founded on the same facts; and that judgment in one would constitute *res judicata* on the other. Because of the concurrence of these similarities, petitioner and respondent sought the abatement of each other's suit on the ground of *litis pendentia*.

The firmly established rule^[1] is that one of two actions will be dismissed on ground of *litis pendentia* if the following requisites concur: (a) identity of parties, or at least such as representing the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity in the two (2) cases should be such that judgment in one would amount to *res judicata* in the other.