388 Phil. 404

THIRD DIVISION

[G.R. No. 131436, May 31, 2000]

GOLDEN DIAMOND, INC., PETITIONER, VS. THE COURT OF APPEALS AND LAWRENCE CHENG, RESPONDENTS.

D E C I S I O N

GONZAGA-REYES, J.:

Before this Court is a petition for review on certiorari of the Decision[1] of the Court of Appeals dated July 23, 1997 affirming the Order[2] of the Regional Trial Court, Branch 92, Quezon City dated May 3, 1994 which declared that herein petitioner GOLDEN DIAMOND, INC. (hereafter petitioner GDI) is not entitled to the monthly royalty fees due from respondent Lawrence Cheng (hereafter respondent Cheng) for the period of February 6, 1991 to August 1, 1993.

The pertinent facts are the following:

On February 6, 1981, petitioner GDI through Jose Tanso (Tanso), its President/Chairman, entered into a Dealer Agreement with International Family Food Services, Inc. (IFFSI), the exclusive licensee in the Philippines of Shakey's Incorporated, U.S.A. Through the Dealer Agreement, IFFSI granted to petitioner GDI an area market franchise whereby the latter was authorized to operate Shakey's pizza parlors in Caloocan City wherein there are three Shakey's outlets, namely, Shakey's MCU, Shakey's Victory-Kalookan and Shakey's Gotesco Grand Central. The Dealer Agreement was agreed to last for ten years, from February 6, 1981 to February 6, 1991 renewable for another ten years.

On August 1, 1988, petitioner GDI entered into a Memorandum of Agreement (MOA) with respondent Cheng, doing business in the name of GOLDEN DRAGON FOOD SERVICES (GDFS). Petitioner GDI assigned to respondent Cheng its rights, interests and obligations under the Dealer Agreement with IFFSI over the Shakey's outlet at Gotesco Grand Central. In return, respondent Cheng bound himself to pay petitioner GDI a monthly royalty fee of five per cent (5%) of the gross dealer sales. The MOA was to remain effective for a period of five (5) years, from August 1, 1988 to August 1, 1993, thus:

> "The existence and effectivity of this Memorandum of Agreement shall be for a period of five (5) years from and after date of signing this Agreement, renewable for another five (5) years at the option of Cheng provided that all conditions for renewal must conform with and be approved by Shakey's in writing."[3]

The MOA also provides that:

> "This Memorandum of Agreement embodies the entire agreement of the parties. There are no terms, conditions or stipulations other than those

set forth."[4]

and in its WHEREAS clause:

> "WHEREAS, TANSO (GDI) is the authorized dealer and franchise holder of International Family Food Services, Inc. (hereinafter referred to as SHAKEY's) by virtue of a Dealer Agreement executed on February 6, 1984, a copy of which is attached hereto as Annex "A" and made an integral part hereof."[5]

By virtue of the MOA, respondent Cheng was able to secure a site franchise for a Shakey's outlet in Gotesco Grand Central. Respondent Cheng paid his monthly obligations under the MOA until February 6, 1991 when he stopped payment of the royalty fees on the ground that the Dealer Agreement between petitioner GDI and IFFSI pertaining to the area of Caloocan City had expired. In refusing to pay the royalty fees, respondent Cheng demanded that petitioner GDI must first produce a renewed contract of the area franchise covering the Gotesco Grand Central outlet, insisting that his payment of the royalty fees is conditioned on the existence of the Dealer Agreement between petitioner GDI and IFFSI. It appears that after the expiration of the Dealer Agreement between petitioner GDI and IFFSI on February 6, 1991, IFFSI was no longer extending franchises by market area, hence, it did not renew the Caloocan City area franchise it had previously granted to petitioner GDI. What IFFSI extended to petitioner GDI was only a site franchise for Shakey's Victory-Kalookan and not for Shakey's Gotesco Grand Central as borne out by the letter[6] of IFFSI to respondent Cheng in response to his query as to the status of the Dealer Agreement between petitioner GDI and IFFSI. Respondent Cheng reasons that from February 7, 1991, petitioner GDI had nothing more to assign to him upon the basis of which petitioner GDI can claim further payment of royalty fees. After February 6, 1991, respondent Cheng continued to operate the Shakey's Gotesco Grand Central outlet. As early as August 8, 1990, respondent Cheng applied for the renewal of his site franchise for Shakey's Gotesco Grand Central directly with IFFSI. On March 6, 1991, IFFSI renewed the site franchise for Shakey's Gotesco Grand Central in favor of respondent Cheng until February 6, 1996 in consideration of the P10,000.00 renewal fee.[7]

On the other hand, petitioner GDI insists that under the MOA, respondent Cheng is obligated to pay the monthly fees up to August 1, 1993 and not February 6, 1991, when its Dealer Agreement with IFFSI expired. Petitioner GDI asserts that the MOA embodies the entire agreement of the parties and that the MOA does not impose a condition for the payment of the royalty fee. Petitioner GDI also contends that the obligation of respondent Cheng to pay the 5% monthly royalty fee from August 1, 1988 up to August 1, 1993 is not dependent on the term of the Dealer Agreement between petitioner GDI and IFFSI ending on February 6, 1991. According to petitioner GDI, respondent Cheng was able to operate the Shakey's Gotesco Grand Central on the strength of the MOA wherein it assigned its right to operate the said outlet to respondent Cheng and since respondent Cheng continued to operate the Shakey's Gotesco Grand Central outlet even after the expiration of the Dealer Agreement between IFFSI and petitioner GDI, petitioner GDI argues that respondent Cheng cannot evade the payment of the royalty fee due until August 1, 1993. Petitioner GDI points out that assuming that the payment of the royalty fee is dependent on the renewal of the Dealer Agreement between IFFSI and petitioner GDI, respondent Cheng's refusal to pay is without basis because of the renewal of

the area franchise of petitioner GDI over Caloocan City. The renewal of the area franchise of petitioner GDI for Caloocan City is allegedly evidenced by Official Receipt No. 42835 issued by IFFSI on March 18, 1991 for the P100,000. 00 renewal fee paid by petitioner GDI.

Despite the repeated demands of petitioner GDI, respondent Cheng failed to pay the royalty fees. Consequently, on December 26, 1991, petitioner GDI filed a complaint against respondent Cheng with the Regional Trial Court, Branch 92, Quezon City presided by Judge Elpidio M. Catungal, Sr. On April 6, 1993, the trial court rendered a decision in favor of petitioner GDI. In sum, the trial court ruled that: petitioner GDI had renewed its franchise for Caloocan City as evidenced by IFFSI Official Receipt No. 42835 for the P100, 000.00 renewal fee paid by petitioner GDI;[8] the MOA between petitioner GDI and respondent Cheng is the law between them;[9] and the terms and conditions of the MOA are clear and leave no room for doubt as to their meaning.[10] Under the MOA, respondent Cheng bound himself to pay 5% of the gross dealer sales for five years from August 1, 1988;[11] and the effectivity of the agreement for five years is not subject to the renewal of the Dealer Agreement between petitioner GDI and IFFSI.[12]

The dispositive portion of the decision reads:

> "WHEREFORE, premises considered, by preponderance of evidence, the court hereby renders judgment in favor of the plaintiff and against the defendant, as follows:
>
> (a) There is a valid, existing contract and enforceable contract between plaintiff and defendant until July 31, 1993;
> (b) Defendant shall pay plaintiff the monthly 'royalty' fees equivalent to five percent (5%) of the monthly gross dealer sales from February 6, 1991 up to July 31, 1993;
> (c) Defendant shall pay plaintiff P150,000.00 as and for reasonable attorney's fees and other litigation expenses, and
> (d) To pay the cost".[13]

Dissatisfied with the judgment, both parties filed their respective motions for reconsideration. On May 3, 1994, Judge Juan Q. Enriquez, Jr., the new judge who presided over the case, issued an Order setting aside the above-mentioned decision and dismissing the case for lack of merit and ordering petitioner to pay respondent Cheng P50,000.00 as attorney's fees and the costs. In ruling for respondent Cheng, the court held that royalties are paid for the use of a right and to further require respondent Cheng to pay the monthly royalty fee after February 6, 1991 is "to subject him to pay for the use of a non-existing right or to give consideration for non-existing object".[14] The parties' repeated reference to the Dealer Agreement in the body of the MOA shows that the parties intended to incorporate the terms and conditions of the said Dealer Agreement as part and parcel of their MOA.[15] Based on the evidence presented, the court ruled that after February 6, 1991, no Dealer Agreement granting an area franchise over Caloocan City has been executed

between GDI, or another party and IFFSI.[16]

On appeal, the Court of Appeals affirmed the decision of the trial court. Hence, petitioner GDI filed this petition for review on certiorari before this Court raising the following issues:

I.

> THE COURT OF APPEALS ERRED IN RULING THAT THE MEMORANDUM OF AGREEMENT IS DEPENDENT ON THE DEALERSHIP AGREEMENT BETWEEN PETITIONER AND IFFSI.

II.

> THE COURT OF APPEALS ERRED IN UPHOLDING THE LOWER COURT'S RULING ON RECONSIDERATION THAT RESPONDENT IS NOT OBLIGATED TO PAY AGREED ROYALTY FEE AFTER 06 FEBRUARY 1991.

III.

> THE COURT OF APPEALS ERRED IN UPHOLDING THE LOWER COURT'S DENIAL ON RECONSIDERATION OF THE PETITIONER'S CLAIMS FOR DAMAGES.[17]

The core issue is whether or not respondent Cheng is bound to pay the monthly royalty fee to petitioner GDI for the period of February 6, 1991 to August 1, 1993. Petitioner GDI insists that the MOA embodies the entire agreement of petitioner GDI and respondent Cheng and the unequivocal promise therein of respondent Cheng to pay the monthly royalty fee to petitioner GDI even beyond the duration of the Dealer Agreement is a binding obligation that respondent Cheng must fulfill until August 1, 1993. We find the contentions of petitioner GDI to be unmeritorious.

While it is true that contracts are respected as the law between the contracting parties, this principle is tempered by the rule that the intention of the parties is primordial.[18] Hence, if the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.[19] In the instant case, the conflicting claims of the parties arise from the fact that the MOA and Dealer Agreement contain periods that are not consistent with each other. The MOA states that the undertaking of respondent Cheng to pay five percent monthly royalty fee to petitioner GDI is until August 1, 1993. On the other hand, the Dealer Agreement, which is attached to the MOA stipulates that the right assigned by petitioner GDI to respondent Cheng will expire on February 6, 1991 renewable for another ten years. It is however not clear whether respondent Cheng is compelled to pay the monthly royalty fee even if petitioner GDI's franchise is not renewed and therefore petitioner GDI no longer holds the right it had previously assigned to respondent Cheng. Thus, this Court is constrained to refrain from imposing the literal terms of the MOA, as petitioner GDI would have it, considering that the terms of the MOA and Dealer Agreement raise a doubt as to the intention of the contracting parties.

In insisting that respondent Cheng should continue to pay the monthly royalty fee even after the expiration of the Dealer Agreement, petitioner GDI harps on the provisions contained in the MOA which limit the effectivity of the MOA to five years