Hanpa Indus. Corp. v. Black Micro Corp., 12 ROP 29 (2004)

HANPA INDUSTRIAL CORPORATION,
Appellant,

v.

BLACK MICRO CORPORATION,
Appellee.

CIVIL APPEAL NO. 04-004
Civil Action No. 02-133

Supreme Court, Appellate Division
Republic of Palau

Argued: November 15, 2004
Decided: November 26, 2004

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Counsel for Appellant: Salvador Remoket

Counsel for Appellee: Douglas Parkinson

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

Appeal from the Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

MICHELSEN, Justice:

This appeal concerns two agreements regarding an important island commodity: dredged coral. The litigation began when Hanpa Industrial Development Corporation [Hanpa] filed suit against Black Micro Corporation [BMC], alleging that BMC tortiously interfered with its dredging agreement with the State of Ngiwal. BMC's answer denied the allegations and counterclaimed, asserting that Hanpa had breached a separate agreement with BMC to provide up to 20,000 cubic yards of dredged coral.

Trial was held on both the complaint and the counterclaim and the Trial Division entered judgment for BMC. Hanpa appeals, arguing that the agreement it reached with BMC was too vague to be a binding contract and that BMC "lured or encouraged" Ngiwal State to breach its agreement with Hanpa. We affirm, because the trial court correctly held that Hanpa failed to prove the necessary elements of a claim of tortious interference with contract, and BMC proved it had a binding contract that Hanpa breached, resulting in damages to BMC.

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BACKGROUND

The trial court found the following facts: Hanpa had an agreement with Ngiwal State that allowed Hanpa to dredge coral at a specific location in Ngiwal, with proceeds of the sale of the resulting aggregate to be shared between them. Hanpa also maintained separate coral stockpiles in other locations ⊥31 including Melekeok. In 2000, BMC was awarded a contract to work on the Capitol relocation project, and consequently Dean Bates, Palau area manager for BMC, met with Soon Seob Ha, President of Hanpa, to discuss purchasing coral from Hanpa's Melekeok stockpile for use in that project. Ha and Bates negotiated a price of $9 per cubic yard (CY) for 20,000 CY.

Bates then prepared a purchase order to memorialize what he understood to be the contract between the parties: 20,000 CY of coral from the Melekeok stockpile to be picked up on an as-needed basis at $9 per CY for a total price of $180,000, with biweekly invoices from Hanpa. Bates had the purchase order delivered to Ha, and in November 2000, BMC began picking up loads of dredged coral from the Melekeok stockpile.

By February 2001, the stockpile was nearly depleted even though BMC had picked up far less than half of the 20,000 CY of coral noted in the purchase order. Bates, concerned that Hanpa was not responding to his inquiries about the lack of available coral and having his own contractual obligations for the Capitol project in mind, approached Governor Elmis Mesubed of Ngiwal State. According to Bates, he had previously been introduced to Governor Mesubed, and on that occasion, the Governor had expressed willingness to assist BMC with its work on the Capitol project. Governor Mesubed, and later his attorney, mentioned to Bates the dredging agreement Ngiwal State maintained with Hanpa, but did not show him the document itself or explain in detail about the arrangement. Both the Governor and his legal counsel asserted that, despite the joint venture with Hanpa, Ngiwal State had legal authority to sell its share of the coral. With these assurances, Bates signed a contract with Ngiwal to purchase coral, and by mid-March 2001, when the Melekeok stockpile of coral was completely gone, BMC began obtaining coral from the Melekeok stockpile.

Subsequently, BMC received duplicate invoices for the coral from Ngiwal -- one from Ngiwal State and one from Hanpa. Pursuant to its agreement with Governor Mesubed, BMC paid the Ngiwal invoices for the coral from the Ngiwal stockpile. Sometime in April, Hanpa resumed dredging at Melekeok, and by August 2001, the stockpile was sufficiently replenished so that BMC once again obtained its coral there, but Hanpa unilaterally raised the price to $10.50 per CY. Bates testified that his company had no choice at the time but to pay Hanpa the higher rate because it needed the coral to finish its work on the Capitol project.

In the resulting lawsuit, Hanpa asserted that BMC received coral from the Ngiwal stockpile but refused to pay Hanpa for it, and that BMC was "conspiring with Ngiwal State officials to evade payment of the subject corals and to undermine and terminate the contract between [Hanpa] and Ngiwal." BMC's counterclaim sought to recover over $75,000 in damages incurred as a result of Hanpa's failure to provide the 20,000 CY of coral as promised.

Based on the evidence presented, the trial court denied Hanpa's claim that BMC intentionally interfered with its contract with Ngiwal State. Relying on *Wolff v. Sugiyama*, 5 ROP Intrm. 105 (1995), the court concluded that Hanpa failed to establish the elements necessary to prove its claim. Addressing BMC's counterclaim for breach of contract, the court held that, despite Ha's protestations to the contrary, Hanpa and BMC formed a binding contract, the terms of which were manifested in the purchase order Bates issued. The court then found that Hanpa had breached ⊥32 the contract by failing to make available the quantity of coral it had promised and by unilaterally raising the price of coral, and awarded BMC $67,830.53 in damages.

STANDARD OF REVIEW

Factual findings of the lower court are reviewed using the clearly erroneous standard. *Temaungil v. Ulechong*, 9 ROP 31, 33 (2001). Under this standard, the findings of the lower court will only be set aside if they lack evidentiary support in the record such that no reasonable trier of fact could have reached that conclusion. *Dilubech Clan v. Ngeremlengui State Pub. Lands Auth.*, 9 ROP 162, 164 (2002). This Court employs the *de novo* standard in evaluating the lower court's conclusions of law. *Temaungil*, 9 ROP at 33.

ANALYSIS

Hanpa claims that the trial court erred in three specific ways: by finding that the parties had a binding contract, by finding that BMC did not intentionally interfere with Hanpa's contract with Ngiwal State, and in calculating damages.

1. Binding Contract

In concluding that the parties entered into an enforceable contract, the trial judge found

> [t]hat Ha, for Hanpa, and Bates, for BMC, met, negotiated, and came to an eventual agreement that BMC would purchase up to 20,000 CY of coral on an as-needed basis from Hanpa's Melekeok stockpile at the price of $9.00 per CY. Based on this agreement, P.O. No. 45162 was issued. There was clear manifestation of mutual assent to the terms of the parties' contract.

Hanpa argues that the negotiations between the parties did not result in a binding contract because BMC was only committed to buying coral on an as-needed basis, which renders the arrangement too open-ended to be legally enforceable.

BMC maintains that the contract formed by the parties was a valid requirements contract, whereby a seller agrees to supply all of a particular good that the buyer needs.[1] But a key element of a requirements contract is the provision that the buyer must buy all of the product at issue from a particular seller. *Varilease Tech. Group, Inc. v. United States*, 289 F.3d 795, 799

[1]BMC refers us to United States law in support of its position, and so we will analyze its argument in the same manner.

(Fed. Cir. 2002); *Coyle's Pest Control, Inc. v. Cuomo*, 154 F.3d 1302, 1305 (Fed. Cir. 1998). Without the limitation on the buyer's freedom to shop elsewhere, a requirements contract would be unenforceable as illusory -- it would lack mutuality of obligation because the buyer would retain the unlimited right to decide its own performance. *Ceredo Mortuary Chapel, Inc. v. United States*, 29 Fed. Cl. 346, 349-50 (Fed. Cl. 1993). The trial court made no finding of exclusivity, and we can find nothing in the record that compels us to imply such a term to the parties' agreement.

Without the restriction on BMC's ability to purchase coral from other vendors, the agreement between the parties is not a valid requirements contract. It may, however, ⊥33 be enforceable as an "indefinite quantities" contract, which does not require an exclusivity provision. An indefinite quantities contract provides that a buyer will purchase and a seller will provide whatever quantity of goods the buyer desires -- here, "up to 20,000 CY" of coral. *Mason v. United States*, 615 F.2d 1343, 1346 n.5 (Ct. Cl. 1980). It is essential to an indefinite quantities contract, however, that the buyer has an obligation to purchase a minimum quantity of goods. *Varilease*, 289 F.3d at 799; *Mason*, 615 F.2d at 1346 n.5. Without a guaranteed minimum quantity provision, the contract is unenforceable because the buyer's promise is illusory. *Fike Corp. v. Great Lakes Chemical Corp.*, 332 F.3d 520, 524 (8th Cir. 2003); *Mason*, 615 F.2d at 1246 n.5. Missing terms may be provided by factual implication, however, based on the course of dealing between the parties, Restatement (Second) of Contracts § 33 cmt. a,[2] and it was clear that BMC's promise was not illusory insofar as it faced an immediate need for coral and intended to procure that coral from Hanpa's Melekeok stockpile. Accordingly, the contract formed as a result of the parties' discussions, as characterized by the trial court, satisfies the requirements of a valid indefinite-quantities contract.

Moreover, a fair reading of the purchase order, the contents of which neither party disputes, suggests that the contract was not for "up to" 20,000 CY, but rather was for the full amount. The purchase order identifies the quantity as 20,000 CY, lists the unit price as $9.00, and then calculates a total amount of $180,000, which suggests that the parties intended to negotiate an arrangement for the full 20,000 CY.

We therefore conclude that, either based on the implied minimum quantity in the oral agreement for "up to 20,000 CY" or based on the express language of the typed purchase order, all material terms necessary to form a binding contract are present -- parties, subject matter, quantity, and price. Restatement (Second) of Contracts § 33 cmt. a (1981). The "as needed" term, which Hanpa believes renders this contract too indefinite, refers only to the form of delivery, allowing BMC to store its coral at the Melekeok Dock until it was needed and could be picked up. The absence of a more definite time period for BMC to pick up its coral does not render this contract so vague as to be unenforceable. Restatement (Second) of Contracts § 33 cmt. d (1981).

On appeal, Hanpa also raises a Statute of Frauds defense. The trial judge found that the

[2]Restatements of the law as approved by the American Legal Institute, expressing the rules of the common law in the United States, serve as rules of decision in the absence of controlling Palauan law. 1 PNC § 303.

parties reached an oral agreement, and then "[b]ased on this agreement," the purchase order was issued. Because the contract is an oral one and because the terms of the contract have no ending date, Hanpa asserts that the contract is void pursuant to 39 PNC § 504(a), which requires a contract to be in writing if "by its terms [it] is not to be performed within one year from the making thereof." 39 PNC § 504(a).

The Statute of Frauds is an affirmative defense and as such it must be raised in the trial court. ROP R. Civ. P. 8(c); *In re Rengiil*, 8 ROP Intrm. 118, 119 (2000). Because Hanpa did not assert the Statute of Frauds defense during the trial proceedings, it may not raise that defense now. Nonetheless, we note that the contract at issue does not need to be in writing because it does not, by its terms, require longer than one year to complete. ⊥34 Restatement (Second) of Contracts § 130 cmt. a (1981) ("Contracts of uncertain duration are simply excluded [from the Statute of Frauds]; the provision covers only those contracts whose performance cannot possibly be completed within a year.").

2. Intentional Interference

Hanpa also disputes the trial court's judgment in favor of BMC on Hanpa's intentional inference claim. To prevail on its claim for intentional interference with a contract, Hanpa needed to establish at trial the following seven elements: (1) that it had a valid, enforceable contract with Ngiwal; (2) that BMC had knowledge of that contract or knowledge of facts that should lead it to ask about the contract; (3) that Ngiwal actually breached its contract with Hanpa; (4) that BMC's actions were the proximate cause of that breach; (5) that BMC intended to induce Ngiwal to breach its contract with Hanpa; (6) that BMC's actions were improper; and (7) that Hanpa suffered pecuniary loss as a result of Ngiwal's breach. *Wolff*, 5 ROP Intrm. at 111. The trial court concluded that BMC was not the proximate cause of Ngiwal's breach of contract with Hanpa because Mesubed initiated contact with Bates about selling additional coral and because the relationship between Ngiwal and Hanpa had begun to deteriorate prior to any action by BMC. The trial court also determined that BMC's decision to purchase coral from Ngiwal was proper in light of Hanpa's failure to provide an adequate supply.

Hanpa disagrees with the trial judge's ruling, but cites no support in the record and includes no explanation of how the trial court erred. Instead, Hanpa merely addresses each element with a few sentences that it believes would yield a decision in its favor. Hanpa does not, however, explain how the trial court's finding is clearly erroneous or why this Court should disturb the credibility findings made by the trial judge. *See Iderrech v. Ringang*, 9 ROP 158, 160 (2002). The trial court's opinion clearly explains its finding, based on the credible testimony of Bates, that Mesubed on behalf of Ngiwal "first approached Bates and offered to sell Ngiwal's share of coral to BMC." We therefore affirm the decision of the trial court rejecting Hanpa's claim that BMC intentionally interfered with its contract with Ngiwal.

3. Damages

The trial court awarded BMC compensation for the following injuries: $10,794.18 for the increase in coral price from Melekeok (from $9.00 per CY to $10.50 per CY in August 2001);

$46,286.35 for costs in repairing a portion of the road between Ngiwal and Melekeok to facilitate hauling the coral that extra distance; and $10,750.00 in actual hauling costs from the Ngiwal stockpile, for a total of $67,830.53.

Hanpa first asserts that because it believed there was no binding contract between the parties, BMC should not receive compensation for the increased coral price at Melekeok. As discussed above, however, the parties entered into a valid contract, and therefore Hanpa's unilateral raising of the price of the coral is a breach of the agreement.

Hanpa also disputes the monetary award for BMC's decision to repair the road, arguing that it was not a reasonable expense because BMC could have either waited just a few more weeks to get coral from Melekeok or explored other options. The trial court's findings of fact, however, explain that by mid-March 2001, the Melekeok stockpile was depleted and that although Hanpa resumed dredging in April, the coral was too wet to be ⊥35 usable. The trial court also concluded that BMC's decision to get coral from Ngiwal was appropriate mitigation and that its calculation of damages was reasonable. None of these findings appears clearly erroneous, and Hanpa has identified nothing in the record to support overturning them.

CONCLUSION

For the reasons stated above, the judgment of the trial court is affirmed.

One final issue, not raised by either party, warrants mention here. In the Trial Division, Hanpa was represented by Moses Uludong. The original complaint, filed by Mr. Uludong, sought a judgment of over $80,000 plus an additional $50,000 in punitive damages, but as a Trial Counselor, Mr. Uludong is not authorized to "represent any party in a civil suit where the matter at issue is of a value of $10,000.00 or more, absent a knowing and voluntary waiver of this rule by the client and with the approval of the judge who is presiding in the case." *See* Rules of Admission to Practice Law and Limitations on the Practice of Law for Trial Counselors in the Republic of Palau 2(c). Despite this rule, we were unable to locate anything in the record to indicate either waiver from Hanpa or permission from the trial judge. We remind trial counselors of their duty to be informed about the rules applicable to their practice before this Court, and we encourage all persons involved with court proceedings to be vigilant about enforcement of these rules. *In re Tarkong*, 4 ROP Intrm. 121, 127 (1994).